

Chapter 6
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; and
 - (c) measures affecting natural persons seeking access to the employment market of a Party, or measures regarding nationality or citizenship, or residence or employment on a permanent basis.
3. Articles 59 and 60 shall not apply to any measure by a Party with respect to government procurement.
4. This Chapter shall not prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in the former Party, 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 a specific commitment.

Note: The sole fact of requiring a visa for natural persons of a certain nationality or citizenship and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.

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

6. Annex 5 provides supplementary provisions to this Chapter on telecommunications services, including scope and definitions.

Article 58 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repair and maintenance services" means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and does not include so-called line maintenance;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 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) 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 "measure" means any measure, whether in the form of a law, regulation, rule, procedure, decision, administrative action or any other form;

Note: The term "measure" shall include taxation measures to the extent covered by the GATS.

- (e) the term "measure by a Party" means any measure taken by:
 - (i) the central, regional or local governments or authorities of a Party; and
 - (ii) non-governmental bodies in the exercise of powers delegated by the central, regional or local governments or authorities of a Party;
- (f) the term "measures by a Party affecting trade in services" includes measures by a Party 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;
- (g) 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;

- (h) 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;
- (i) the term "service consumer" means any person that receives or uses a service;
- (j) the term "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 service, by a vessel registered under the law of the other Party, or by a person of the other Party which supplies such 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;
- (k) 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;
- (l) the term "supply of a service" includes the production, distribution, marketing, sale and delivery of a service;
- (m) 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");
 - (ii) in the Area of a Party to the service consumer of the other Party ("consumption abroad");

- (iii) by a service supplier of a Party, through commercial presence in the Area of the other Party ("commercial presence"); 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"); and
- (n) 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 59 Market Access

1. With respect to market access through the modes of supply defined in subparagraph (m) of Article 58, 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 Commitments in Annex 6.

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 (m) (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 (m) (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 6, 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.

3. Each Party shall endeavour to reduce the requirements for 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 cross-border supply of a service.

Article 60 National Treatment

1. In the sectors inscribed in its Schedule of Specific Commitments in Annex 6, 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.

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 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.

4. A Party shall not invoke the preceding paragraphs under Chapter 14 with respect to a measure of the other Party that falls within the scope of an international agreement between them 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 6.

Article 62
Schedule of Specific Commitments

1. With respect to sectors or sub-sectors where specific commitments are undertaken by each Party, its Schedule of Specific Commitments in Annex 6 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. This inscription will be considered to provide a condition or qualification to Article 60 as well.

Article 63
Most-Favoured-Nation Treatment

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

Article 64
Domestic Regulation

1. In the sectors inscribed in its Schedule of Specific Commitments in Annex 6, 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. The provisions of 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 domestic 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. The Parties shall jointly discuss disciplines on domestic regulation including measures relating to qualification requirements and procedures, technical standards and licensing requirements developed pursuant to paragraph 4 of Article VI of the GATS, with a view to incorporating such disciplines into this Chapter and thereby ensuring that such domestic regulation does not constitute unnecessary barriers to trade in services. The Parties note that such disciplines aim to ensure that such requirements are *inter alia*:

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

6. Pending the incorporation of disciplines developed under the GATS as referred to in paragraph 5, in the sectors inscribed in its Schedule of Specific Commitments in Annex 6 and subject to any terms, limitations, conditions or qualifications set out therein, each Party shall not apply licensing and qualification requirements and technical standards that nullify or impair its specific commitments in a manner which:

- (a) does not comply with the criteria outlined in subparagraph (a), (b) or (c) of paragraph 5; 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 obligation under paragraph 6, account shall be taken of international standards of relevant international organisations applied by that Party.

Note: The term "relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of the Parties.

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 65
Recognition

1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing or certification of service suppliers, a Party may recognise the education or experience obtained, requirements met, or licences or certifications granted in the other Party.

2. The Parties shall enter into negotiations regarding the possibility of recognition of the education or experience obtained, requirements met, or licences or certifications granted on specific services sectors with a view to reaching a conclusion within three years after the entry into force of this Agreement.

3. Upon request being made in writing by a Party to the other Party, the Parties shall encourage that their respective professional bodies in any regulated service sector negotiate and conclude, within 12 months, any arrangement 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 arrangements shall not be regarded as a breach of a Party's obligations under this paragraph and shall not be subject to Chapter 14. Progress in this regard shall be periodically reviewed by the Parties in the Joint Committee established under Article 14.

4. Where a Party recognises, by agreement or arrangement, the education or experience obtained, requirements met or licences or certifications granted in any non-Party, the Party shall afford 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 the other Party 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.

Article 66
Transparency

1. The competent authorities referred to in paragraph 2 of Article 4 shall, upon request by the other Party or service suppliers of the other Party, promptly respond to specific questions from, and provide information to, the other Party or the service suppliers with respect to matters referred to in Article 4, including requirements and procedures for licensing and qualification, through enquiry points. The enquiry points shall be notified to the other Party by diplomatic note on the date of entry into force of this Agreement.

2. Each Party shall endeavour to prepare, forward to the other Party and make public a list providing all existing measures, within the scope of this Chapter, at the central governmental level, and prefectural governmental level in the case of Japan and governmental level of states and Union territories in the case of India, which are inconsistent with Articles 59 and/or 60, whether or not these measures are included in its Schedule of Specific Commitments in Annex 6. The list shall include the following elements and shall be reviewed annually and revised as necessary:

- (a) sector and sub-sector or matter;
- (b) type of inconsistency (i.e. Market Access and/or National Treatment);
- (c) legal source or authority of the measure; and
- (d) succinct description of the measure.

Note: The list under this paragraph will be made solely for the purposes of transparency, and shall not be construed to affect any rights and obligations of a Party under this Chapter. The Parties understand that the list as required in this paragraph shall be prepared if possible within five years after the entry into force of this Agreement.

3. The dispute settlement procedures provided for in Chapter 14 shall not apply to disputes arising out of paragraphs 1 and 2.

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 of a service 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 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, the Party may request the other Party establishing, maintaining or authorising such supplier 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) authorises 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 relating to such commitments. It is recognised that particular pressure 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:

- (a) shall be applied by a Party on a national treatment basis and 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 restrictions, a Party may give priority to the supply of services which are more essential to its economic or development programmes. However, such restrictions shall not be adopted or maintained for the purposes 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 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, upon request by 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 programme such as:

- (a) domestic laws and regulations under which the subsidy is granted;
- (b) form of the subsidy (e.g. grant, loan, tax concession);
- (c) policy objective and/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 including those with respect to potential beneficiaries.

4. The dispute settlement procedures provided for in Chapter 14 shall not apply to this Article.

Article 71
Review of Commitments

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

2. In reviewing the commitments in accordance with paragraph 1, the Parties shall take into account paragraph 1 of Article IV of the GATS.

Article 72
Sub-Committee on Trade in Services

1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Trade in Services (hereinafter referred to in this Article as "the Sub-Committee") shall be established on the date of entry into force of this Agreement.

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

- (a) reviewing the implementation and operation of this Chapter;
- (b) exchanging information on domestic laws and regulations;
- (c) discussing any issue related to this Chapter as may be agreed upon;
- (d) reporting the findings of the Sub-Committee to the Joint Committee; and
- (e) carrying out other functions which may be delegated by the Joint Committee pursuant to Article 14.