

Article 74
Environmental Measures

Each Party recognizes that it is inappropriate to encourage investments by investors of the other Party by relaxing its environmental measures. To this effect each Party should not waive or otherwise derogate from such environmental measures as an encouragement for establishment, acquisition or expansion of investments in its Area.

Article 75
Sub-Committee on Investment

For the purposes of the effective implementation and operation of this Chapter, the functions of the Sub-Committee on Investment (hereinafter referred to in this Article as "the Sub-Committee") established in accordance with Article 15 shall be:

- (a) reviewing and monitoring the implementation and operation of this Chapter;
- (b) reviewing the specific reservations and exceptions under Article 64;
- (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 in accordance with Article 14.

Chapter 6
Trade in Services

Article 76
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) subsidies provided by a Party or a state enterprise thereof, including grants, government-supported loans, guarantees and insurance;
- (d) measures affecting the movement of natural persons of a Party, unless otherwise provided in a Schedule of Specific Commitments in Annex 8;
- (e) measures affecting natural persons of a Party seeking access to employment market of the other Party, or measures regarding nationality, or residence or employment on a permanent basis; and
- (f) government procurement.

3. Annex 7 provides supplementary provisions to this Chapter on financial services, including scope and definitions.

Article 77 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repair and maintenance services" means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and does not include so-called line maintenance;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 services;

- (c) the term "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 may be made or tickets may be issued;
- (d) the term "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) the term "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; 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 a non-Party if more than 50 percent of the equity interests in it is beneficially owned by such persons;
 - (ii) "controlled" by persons of a Party or a non-Party if such 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) 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.

- (h) the term "measure by a Party" means any measure taken by:
 - (i) central or local governments and authorities of a Party; and
 - (ii) non-governmental bodies in the exercise of powers delegated by central or local governments or authorities of a Party;
- (i) 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 services;
 - (ii) the access to and use of, in connection with the supply of services, 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 services in the Area of the former Party;
- (j) the term "monopoly supplier of a service" means any person, public or private, which in the relevant market of a Party is authorized or established formally or in effect by that Party as the sole supplier of that service;
- (k) the term "natural person of a Party" means a natural person who resides in a Party or elsewhere and who is a national of the Party under the law of the Party;
- (l) the term "person" means either a natural person or a juridical person;
- (m) the term "service" includes any service in any sector except a service supplied in the exercise of governmental authority;
- (n) the term "service consumer" means any person that receives or uses services;
- (o) 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 under the law of the other Party, or by a person of the other Party which supplies such 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;
- (p) 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;
- (q) the term "service supplier" means any person that seeks to supply or 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.

- (r) the term "state enterprise" means an enterprise owned or controlled by the Government of a Party;
- (s) the term "supply of a service" includes the production, distribution, marketing, sale and delivery of a service;
- (t) the term "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) the term "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) 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 78
Market Access

1. With respect to market access through the modes of supply defined in subparagraph (u) of Article 77, 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 8.

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 77 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 77, 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 8, 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 79
National Treatment

1. In the sectors inscribed in its Schedule of Specific Commitments in Annex 8, 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 the Party which accords such treatment 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 the Parties relating to the avoidance of double taxation.

Article 80
Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 78 and 79, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Party's Schedule of Specific Commitments in Annex 8.

Article 81
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 8 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 78 and 79 shall be inscribed in the column relating to Article 78. In this case the inscription will be considered to provide a condition or qualification to Article 79 as well.

3. With respect to sectors or sub-sectors where specific commitments are undertaken in Annex 8 and which are indicated with "SS", any terms, limitations, conditions and qualifications, referred to in subparagraphs 1(a) and (b), shall be limited to those based on non-conforming measures, which are in effect on the date of entry into force of this Agreement.

4. With respect to sectors or sub-sectors where specific commitments are undertaken by a Party in Annex 8 and which are indicated with "S", any terms, limitations, conditions and qualifications on market access or national treatment, applied to a service supplier of the other Party on the date of entry into force of this Agreement, shall not be changed or modified so as to become more restrictive to such a service supplier.

Note: With regard to the rights given to the service supplier under the above mentioned terms, limitations, conditions and qualifications, this paragraph shall apply to the same extent as the rights that the service supplier has already exercised.

Article 82
Most-Favoured-Nation Treatment

1. 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.
2. Paragraph 1 shall not apply to any measure by a Party with respect to sectors, sub-sectors or activities, as set out in its Schedule in Annex 9.

Article 83
Authorization, Licensing or Qualification

With a view to ensuring that any measure by a Party relating to the authorization, licensing or qualification of service suppliers of the other Party does not constitute an unnecessary barrier to trade in services, each Party shall endeavor 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.

Article 84
Mutual 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 82 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; and
- (b) 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 85
Transparency

The competent authorities referred to in paragraph 2 of Article 3 shall, upon request by service suppliers of the other Party, promptly respond to specific questions from, and provide information to, the service suppliers with respect to matters referred to in paragraph 1 of Article 3 through the contact points referred to in Article 16.

Note: The information provided by the Parties under this Article will be supplied solely for the purposes of transparency and shall not be construed to affect any rights and obligations of the Parties under this Chapter.

Article 86
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. 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 87
Payments and Transfers

1. Except under the circumstances envisaged in Article 88, 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 commitments under this Chapter regarding such transactions, except under Article 88, or at the request of the International Monetary Fund.

Article 88
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, including on payments or transfers for transactions.

2. The restrictions referred to in paragraph 1:
- (a) shall ensure that the other Party is treated as favourably 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 purposes of protecting a particular service sector.

Article 89 Emergency Safeguard Measures

1. The Parties shall take note of the multilateral negotiations on the question of emergency safeguard measures based on the principle of non-discrimination pursuant to Article X 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 based on the results of such multilateral negotiations.

2. In the event that the implementation of this Agreement causes substantial adverse impact to a Party in a specific service sector prior to the conclusion of the multilateral negotiations referred to in paragraph 1, the Party may request consultations with the other Party for the purposes of taking appropriate measures to address such adverse impact. The Parties shall take into account the circumstances of the particular case in such consultations.

Article 90 Denial of Benefits

1. A Party may deny the benefits of this Chapter to a service supplier of the other Party that is a juridical person of the other Party, where the denying Party establishes that the juridical person is owned or controlled by persons of a non-Party, and 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 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 of the other Party that is a juridical person of the other Party, where the denying Party establishes that the juridical person is owned or controlled by persons of a non-Party and has no substantial business activities in the Area of the other Party.

Article 91
Sub-Committee on Trade in Services

For the purposes of effective implementation and operation of this Chapter, the functions of the Sub-Committee on Trade in Services (hereinafter referred to in this Article as "the Sub-Committee") established in accordance with Article 15 shall be:

- (a) reviewing and monitoring the implementation and operation of this Chapter;
- (b) discussing any issues related to this Chapter;
- (c) reporting the findings of the Sub-Committee to the Joint Committee; and
- (d) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 14.

Chapter 7
Movement of Natural Persons

Article 92
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 10.

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