

Chapter 7
Trade in Services

Article 7.1
Scope

1. This Chapter shall apply to measures adopted or maintained by a Party affecting trade in services.
2. This Chapter shall not apply to:
 - (a) cabotage in maritime transport services;
 - (b) with respect to air transport services, measures affecting traffic rights, however granted, or measures affecting services directly related to the exercise of traffic rights;
 - (c) government procurement;
 - (d) subsidies provided by a Party or a state enterprise, including grants, government-supported loans, guarantees and insurance;
 - (e) measures pursuant to immigration laws and regulations;
 - (f) 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
 - (g) services supplied in the exercise of governmental authority.
3. Notwithstanding subparagraph 2(b), this Chapter shall apply to measures affecting:
 - (a) aircraft repair and maintenance services;
 - (b) the selling and marketing of air transport services; and
 - (c) computer reservation system services.

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

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

Article 7.2 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repair and maintenance services" means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from services and does not include so-called line maintenance;
- (b) 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;
- (c) the term "existing" means in effect on the date of entry into force of this Agreement;
- (d) 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);

- (e) 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.

- (f) the term "measure adopted or maintained by a Party" means any measure adopted or maintained by:

- (i) any level of government or authority of a Party; and

- (ii) non-governmental bodies in the exercise of powers delegated by any level of government or authority of a Party;

- (g) the term "measures by a Party affecting trade in services" includes measures with respect to:

- (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;

- (h) the term "monopoly supplier of a service" means any person, public or private, which in the relevant market of the Party, is authorized or established formally or in effect by that Party as the sole supplier of that service;

- (i) the term "natural person of a Party" means a national of a Party under the law of the Party;

- (j) 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;
- (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 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"); or
 - (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

- (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 7.3 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, with respect to 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 a Party compared to like services or service suppliers of the other Party.

Article 7.4
Most-Favored-Nation Treatment

1. 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. Each Party may maintain measures inconsistent with paragraph 1 provided that such measures are listed in, and meet the conditions of, the List of Most-Favored-Nation Treatment Exemptions in Annex 6.

Article 7.5
Market Access

1. With respect to market access through the modes of supply identified in subparagraph (m) of Article 7.2, a 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 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 7.2 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 7.2, 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.

Article 7.6 Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 7.3 and 7.5, 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 7.7
Schedule of Specific Commitments

1. Each Party shall set out in a schedule the specific commitments it undertakes under Articles 7.3, 7.5 and 7.6. With respect to sectors or sub-sectors where such commitments are undertaken, each 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 related to additional commitments; and
- (d) where appropriate, the time-frame for implementation of such commitments.

2. With respect to sectors or sub-sectors where the specific commitments are undertaken and which are indicated with "SS", any terms, limitations, conditions and qualifications, referred to in subparagraphs 1(a) and 1(b), other than those based on measures pursuant to immigration laws and regulations, shall be limited to those based on existing non-conforming measures.

3. Measures inconsistent with both Articles 7.3 and 7.5 shall be inscribed in the column related to Article 7.5. In this case the inscription will be considered to provide a condition or qualification to Article 7.3 as well.

Article 7.8
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. Where authorization is required by a Party for the supply of a service, the competent authorities of that Party shall, within a reasonable period of time after the submission of an application is considered complete under the laws and regulations of that Party, inform the applicant of the decision concerning the application. Upon request of the applicant, the competent authorities of that Party shall provide, without undue delay, information concerning the status of the application.

3. With a view to ensuring that any measure adopted or maintained by a Party in any services sector related to the authorization, qualification requirements and procedures, technical standards and licensing requirements of service suppliers of the other Party does not constitute an unnecessary barrier to trade in services, each Party shall ensure that such measure:

- (a) is based on objective and transparent criteria, such as the competence and ability to supply the service;
- (b) is not more burdensome than necessary to ensure the quality of the service; and
- (c) does not constitute a disguised restriction on the supply of the service.

Article 7.9 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 7.4 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 a comparable one 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 7.10

Monopolies and Exclusive Service Suppliers

1. A 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 that Party's obligations under Articles 7.3, 7.4 and 7.5.

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, in an area subject to its Specific Commitments, that Party shall ensure that such a supplier does not abuse its monopoly position to act in the Area of that Party in a manner inconsistent with such commitments under Articles 7.3 and 7.5.

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 former Party may request the other Party to provide specific information concerning the relevant operations.

4. 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 7.11 Business Practices

1. The Parties recognize that certain business practices of service suppliers, other than those falling under Article 7.10, may restrain competition and thereby restrict trade in services.

2. A Party shall, upon request of the other Party, enter into consultations with a view to eliminating practices referred to in paragraph 1. The Party addressed shall accord full and sympathetic consideration to such a request and shall cooperate through the supply of publicly available non-confidential information of relevance to the matter in question. The Party addressed shall also provide other information available to the requesting Party, subject to its laws and regulations and to the conclusion of a satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Party.

Article 7.12 Payments and Transfers

1. Except under the circumstances envisaged in Article 7.13, a Party shall not apply restrictions on international transfers and payments for current transactions related 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. However, a Party shall not impose restrictions on any capital transactions inconsistently with its Specific Commitments regarding such transactions, except under Article 7.13 or upon request of the International Monetary Fund.

Article 7.13

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

2. The restrictions referred to in paragraph 1 shall:

- (a) be applied on the basis of national treatment and most-favored-nation treatment;
- (b) be consistent with the Articles of Agreement of the International Monetary Fund;
- (c) avoid unnecessary damage to the commercial, economic and financial interests of the other Party;
- (d) not exceed those necessary to deal with the circumstances described in paragraph 1; and
- (e) 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.

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

Article 7.14 Transparency

Each Party shall prepare a non-legally binding list providing all relevant measures affecting the obligations under Articles 7.3, 7.4 and 7.5 in all sectors. The list shall be exchanged with the other Party and made publicly available within five years from the date of entry into force of this Agreement and shall also be subject to future review and revision where necessary or as agreed between the Parties. The list shall include the following elements:

- (a) sector and sub-sector or matter;
- (b) type of inconsistency (i.e. national treatment, most-favored-nation treatment and/or market access);
- (c) legal source or authority of the measure; and
- (d) brief description of the measure.

Note: The list under this Article is made solely for the purposes of transparency, and shall not be construed to affect the rights and obligations of a Party under this Chapter. Any review or revision under this Article is solely for the purposes of updating such list.

Article 7.15 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 regarding the non-Party that:

(i) prohibit transactions with the juridical person; or

(ii) 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 7.16

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) 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.

3. The Sub-Committee shall be composed of representatives of the Governments of the Parties.

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

Article 7.17
Review of Commitments

1. With the objective of further liberalizing trade in services between the Parties, including the possibility of renegotiating the format of schedules, the Parties shall consider in due course undertaking a review of this Chapter and the Annexes referred to therein on occasions as may be agreed by the Parties.

2. If, after the entry into force of this Agreement, a Party has undertaken further liberalization autonomously in any of the services sectors, sub-sectors or activities, it shall consider in due course requests from the other Party to incorporate such liberalization into this Agreement.