

Article 68 Confidentiality

1. Each Party shall maintain, in accordance with its laws and regulations, the confidentiality of information provided to it as confidential pursuant to this Chapter and shall protect that information from disclosure that could prejudice the competitive position of the persons providing the information.

2. Information obtained pursuant to this Chapter shall not be used by a Party in any criminal proceedings carried out by a court or a judge, unless the information is requested to the other Party and provided to the former Party, through the diplomatic channels or other channels established in accordance with the applicable laws of the requested Party.

Article 69 Sectoral Annex

If a Party introduces new or additional conformity assessment procedures within the same product coverage to satisfy the technical requirements set out in the applicable laws, regulations and administrative provisions specified in the relevant Sectoral Annex, Part 2 of the Sectoral Annex shall be amended to set out the applicable laws, regulations and administrative provisions stipulating such new or additional conformity assessment procedures, in accordance with the procedures set out in paragraph 2 of Article 163.

Chapter 7 Trade in Services

Article 70 Scope and Coverage

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 pursuant to immigration laws and regulations; and
 - (e) 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 72, 73 and 76 shall not apply to any measure by a Party with respect to government procurement.
4. Annex 5 provides supplementary provisions to this Chapter with respect to measures affecting the supply of financial services.

Article 71 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 computerized systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;
- (d) 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:
 - (aa) natural persons of the other Party; or
 - (bb) juridical persons of the other Party identified under subparagraph (i) above;
- (e) a juridical person is:
 - (i) "owned" by persons if more than fifty (50) percent of the equity interest in it is owned by such persons;
 - (ii) "controlled" by persons if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;
 - (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;
- (f) the term "measures by a Party" means measures taken by:
 - (i) central or local governments; and
 - (ii) non-governmental bodies in the exercise of powers delegated by central or local governments;
- (g) the term "measures by a Party affecting trade in services" includes measures in respect of:

- (i) the purchase, payment or use of a service;
 - (ii) the access to and use of, in connection with the supply of a service, services which are required by a Party to be offered to the public generally;
 - (iii) the presence, including commercial presence, of persons of a Party for the supply of a service in the Area of the other Party;
- (h) 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 authorized or established formally or in effect by that Party as the sole supplier of that service;
- (i) the term "natural person of the other Party" means a natural person who resides in the other Party or elsewhere and who under the law of the other Party is a national of the other Party;
- (j) the term "sector" of a service means:
 - (i) with reference to a specific commitment, one or more, or all, subsectors of that service, as specified in a Party's Schedule of Specific Commitments in Part 1 of Annex 6; or
 - (ii) otherwise, the whole of that service sector, including all of its subsectors;
- (k) 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;
- (l) the term "service consumer" means any person that receives or uses a service;
- (m) 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, by a vessel registered under the laws of the other Party, or by a person of the other Party which supplies the service through the operation of a vessel or its use in whole or in part; or
- (ii) in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of the other Party;
- (n) the term "services" includes any service in any sector except services supplied in the exercise of governmental authority;
- (o) 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;
- (p) the term "service supplier" means any person that supplies a service;

Note: Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers. 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 where the service is supplied.

- (q) the term "service supplier of the other Party" means any natural person of the other Party or juridical person of the other Party, that supplies a service;
- (r) the term "state enterprise" means an enterprise owned or controlled by a Party;
- (s) the term "supply of a service" includes the production, distribution, marketing, sale and delivery of a service;

- (t) the term "trade in services" means the supply of a service:
 - (i) from the Area of one Party into the Area of the other Party ("cross-border mode");
 - (ii) in the Area of one Party to the service consumer of the other Party ("consumption abroad mode");
 - (iii) by a service supplier of one Party, through commercial presence in the Area of the other Party ("commercial presence mode");
 - (iv) by a service supplier of one Party, through presence of natural persons of that Party in the Area of the other Party ("presence of natural persons mode"); and
- (u) 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 72
Market Access

1. With respect to market access through the modes of supply defined in subparagraph (t) of Article 71, each Party shall accord services and service suppliers of the other Party treatment no less favorable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule of Specific Commitments in Part 1 of 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 (t)(i) of Article 71 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 (t)(iii) of Article 71, 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 Part 1 of 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 73 National Treatment

1. In the sectors inscribed in its Schedule of Specific Commitments in Part 1 of 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 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 above 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 74 Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 72 and 73, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Party's Schedule of Specific Commitments in Part 1 of Annex 6.

Article 75
Schedule of Specific Commitments

1. Each Party shall set out in a schedule the Specific Commitments it undertakes under Articles 72, 73 and 74.
2. With respect to sectors where the specific commitments are undertaken, each Schedule of Specific Commitments in Part 1 of 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.
3. With respect to sectors or subsectors where the specific commitments are undertaken and which are indicated with "SS", any terms, limitations, conditions and qualifications, referred to in subparagraphs 2(a) and (b) above, shall be limited to existing non-conforming measures.
4. Measures inconsistent with both Articles 72 and 73 shall be inscribed in the column relating to Article 72. This inscription will be considered to provide a condition or qualification to Article 73 as well.
5. Schedules of Specific Commitments shall be annexed to this Agreement as Part 1 of Annex 6.

Article 76
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, in like circumstances, to services and service suppliers of any non-Party.
2. The provision of paragraph 1 above shall not apply to any measure by a Party with respect to sectors, subsectors or activities, as set out in its Schedule to Part 2 of Annex 6.

Article 77
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 competence and the 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 services.

Article 78
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 above, 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 76 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 79 Transparency

1. 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, 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 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, in the case of Japan, prefectural governmental level, and in the case of the Philippines, provincial governmental level, which are inconsistent with Articles 72 and/or 73, whether or not these measures are included in its specific commitments in Part 1 of Annex 6. The list shall include the following elements and shall be reviewed annually and revised as necessary:

- (a) sector and subsector 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.

Article 80 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 specific commitments.

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 specific commitments, 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 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 81 Payments and Transfers

1. Except under the circumstances envisaged in Article 82, 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 82, or at the request of the International Monetary Fund.

Article 82 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 above:

- (a) shall ensure that the other Party is treated as favorably as any non-Party;

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

3. In determining the incidence of such restrictions, a Party may give priority to the supply of services which are more essential to their 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 above, or any changes therein, shall be promptly notified to the other Party.

Article 83 General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination against the other Party, or a disguised restriction on trade in services between the Parties, nothing in this Chapter shall be construed to prevent the adoption or enforcement by either Party of measures:

- (a) necessary to protect public morals or to maintain public order;

Note: The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter including those relating to:

- (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;
- (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
- (iii) safety.

Article 84
Security Exceptions

1. Nothing in this Chapter shall be construed:
 - (a) to require a Party to furnish any information, the disclosure of which it considers contrary to its essential security interests; or
 - (b) to prevent a Party from taking any action which it considers necessary for the protection of its essential security interests:
 - (i) relating to the supply of services as carried out directly or indirectly for the purposes of provisioning a military establishment;
 - (ii) relating to the implementation of national policies or international agreements respecting the non-proliferation of weapons, or relating to fissionable and fusionable materials or the materials from which they are derived;
 - (iii) taken in time of war or other emergency in international relations; or
 - (c) to prevent a Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.
2. Each Party shall be informed to the fullest extent possible of measures taken by the other Party under subparagraphs 1(b) and (c) and of their termination.

Article 85
Denial of Benefits

1. A Party may deny the benefits of this Chapter to a service supplier of the other Party where the Party establishes that the service is being supplied by a juridical person that is owned or controlled by persons of a non-Party, and that 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 where the Party establishes that the service is being supplied by a juridical person that is owned or controlled by persons of a non-Party and that has no substantial business activities in the Area of that other Party. This paragraph shall not apply to maritime transport services supplied by a vessel registered under the laws of the other Party.

Article 86
Sub-Committee on Trade in Services

1. For 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 pursuant to Article 13.

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

- (a) reviewing commitments, including the scope of commitments to be indicated with "SS" pursuant to paragraph 3 of Article 75, with respect to measures affecting trade in services in this Chapter, with a view to achieving further liberalization on a mutually advantageous basis and securing an overall balance of rights and obligations;
- (b) reviewing the implementation and operation of this Chapter;

- (c) exchanging information on domestic laws and regulations;
- (d) discussing any issues related to this Chapter, including deadlines for preparing, forwarding to the other Party and making public the list referred to in Article 79;
- (e) reporting the findings of the Sub-Committee to the Joint Committee; and
- (f) performing other functions as may be delegated by the Joint Committee pursuant to Article 13.

Chapter 8 Investment

Article 87 Scope and Coverage

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:
 - (a) investors of the other Party; and
 - (b) investments of investors of the other Party in the Area of the former Party.
2. Nothing in this Chapter shall impose any obligation on either Party regarding measures pursuant to immigration laws and regulations.
3. Nothing in this Chapter shall be construed to expand the scope of the specific commitments undertaken by either Party pursuant to Chapter 7.
4. Articles 89, 90 and 93 shall not apply to any measure that the Philippines adopts or maintains relating to investors of Japan and their investments in service sectors with respect to the establishment, acquisition or expansion of investments.

Article 88 Definitions

For the purposes of this Chapter:

- (a) the term "financial services" shall have the same meaning as in subparagraph 5(a) of the Annex on Financial Services of the GATS;