

CHAPTER 7
TRADE IN SERVICES

Article 58
Scope of and Definitions under Chapter 7

1. This Chapter shall apply to measures by the Parties affecting trade in services.
2. In respect of air transport services, this Agreement shall not apply to measures affecting traffic rights, however granted; or to measures affecting services directly related to the exercise of traffic rights, other than measures affecting:
 - (a) aircraft repair and maintenance services;
 - (b) the selling and marketing of air transport services; and
 - (c) computer reservation system services.
3. This Chapter shall not apply to cabotage in maritime transport services.
4. Annexes IV A and IV B provide supplementary provisions to this Chapter with respect to measures affecting the supply of financial services and of telecommunications services respectively.
5. Government procurement of services shall be governed by Chapter 11.
6. For the purposes of this Chapter:
 - (a) the term "measure" means any measure by a Party, including those of taxation, whether in the form of a law, regulation, rule, procedure, decision, administrative action or any other form;
 - (b) the term "supply of a service" includes the production, distribution, marketing, sale and delivery of a service;
 - (c) 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 territory of the other Party;
- (d) 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 territory of a Party for the purpose of supplying a service;
- (e) 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 Annex IV C; or
 - (ii) otherwise, the whole of that service sector, including all of its subsectors;
- (f) the term "service supplier" means any person that supplies a service;^(Note)

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 territory where the service is supplied.

- (g) the term "service consumer" means any person that receives or uses a service;

- (h) the term "service of the other Party" means a service which is supplied:
 - (i) from or in the territory 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;
- (i) the term "person" means either a natural person or a juridical person;
- (j) 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;
- (k) the term "natural person of the other Party" means a natural person who resides in the territory of the other Party or elsewhere and who under the law of the other Party:
 - (i) in respect of Japan, is a national of Japan; and
 - (ii) in respect of Singapore, is a national of Singapore or has the right of permanent residence in Singapore;
- (l) the term "juridical person" means any legal entity duly constituted or otherwise organised 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;
- (m) the term "juridical person of the other Party" means a juridical person which is either:

- (i) constituted or otherwise organised under the law of the other Party and, if it is owned or controlled by natural persons of non-Parties or juridical persons constituted or otherwise organised under the law of non-Parties, is engaged in substantive business operations in the territory of either 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 sub-paragraph (i) above;
- (n) a juridical person is:
 - (i) "owned" by persons of a Party if more than 50 percent of the equity interest in it is beneficially owned by persons of that Party;
 - (ii) "controlled" by persons of a Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;
 - (iii) "owned by natural persons of non-Parties" if more than 50 percent of the equity interest in it is beneficially owned by natural persons of non-Parties;
 - (iv) "controlled by natural persons of non-Parties" if such natural persons have the power to name a majority of its directors or otherwise to legally direct its actions;
 - (v) "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;
- (o) the term "trade in services" means the supply of a service:
 - (i) from the territory of one Party into the territory of the other Party ("cross-border mode");

- (ii) in the territory 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 territory 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 territory of the other Party ("presence of natural persons mode");
- (p) 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;
- in fulfilling its obligations and commitments under this Chapter, each Party shall take such reasonable measures as may be available to it to ensure observance of the provisions of this Chapter by its local governments and non-governmental bodies in the exercise of powers delegated by its central or local governments within its territory;
- (q) the term "services" includes any service in any sector except services supplied in the exercise of governmental authority;
- (r) the term "a 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;
- (s) 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;

- (t) 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;
- (u) 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;
- (v) the term "traffic rights" means the rights for scheduled and non-scheduled services to operate or to carry passengers, cargo and mail for remuneration or hire from, to, within, or over the territory of 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;
- (w) the term "monopoly supplier of a service" means any person, public or private, which in the relevant market of the territory of a Party is authorised or established formally or in effect by that Party as the sole supplier of that service; and
- (x) the term "direct taxes" comprises all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

Article 59 Market Access

1. With respect to market access through the modes of supply defined in sub-paragraph (o) of paragraph 6 of Article 58 above, 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 IV C.^(Note)

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 (i) of sub-paragraph (o) of paragraph 6 of Article 58 above 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 (iii) of sub-paragraph (o) of paragraph 6 of Article 58 above, it is thereby committed to allow related transfers of capital into its territory.

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 territory, unless otherwise specified in its Schedule of specific commitments in Annex IV C, 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)

Note: Sub-paragraph (c) of paragraph 2 of Article 59 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 60
National Treatment under Chapter 7

1. In the sectors inscribed in its Schedule of specific commitments in Annex IV C, 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)

Note: Specific commitments assumed under Article 60 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 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 may not invoke paragraphs 1, 2 and 3 above under Chapter 21 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 above, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Party's Schedule of specific commitments in Annex IV C.

Article 62
Service Suppliers of Any Non-Party

Each Party shall also accord treatment granted under this Chapter to a service supplier other than those of the Parties, that is a juridical person constituted under the laws of either Party, and who supplies a service through commercial presence, provided that it engages in substantive business operations in the territory of either Party.

Article 63
Schedule of Specific Commitments
under Chapter 7

1. Each Party shall set out in a schedule the specific commitments it undertakes under Articles 59, 60 and 61. With respect to sectors where such commitments are undertaken, each Schedule of specific commitments in Annex IV C 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.

3. Schedules of specific commitments shall be annexed to this Agreement as Annex IV C.

4. (a) If a Party has entered into an international agreement on trade in services with a non-Party, or enters into such an agreement after this Agreement comes into force, it shall favourably consider according to services and service suppliers of the other Party, treatment no less favourable than the treatment that it accords to like services and service suppliers of that non-Party pursuant to such an agreement.
- (b) An international agreement referred to in subparagraph (a) above shall not include an agreement on the avoidance of double taxation or provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Party is bound.

Article 64 Domestic Regulation

1. In sectors where specific commitments are undertaken, 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 above 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 that Party's 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. In sectors where a Party has undertaken specific commitments subject to any terms, limitations, conditions or qualifications set out therein, the Party shall not apply licensing and qualification requirements and technical standards that nullify or impair such specific commitments in a manner which:

- (a) does not comply with the following criteria:
 - (i) based on objective and transparent criteria, such as competence and the ability to supply the service;
 - (ii) not more burdensome than necessary to ensure the quality of the service; or
 - (iii) in the case of licensing procedures, not in themselves a restriction on the supply of the service; and
- (b) could not reasonably have been expected of that Party at the time the specific commitments in those sectors were made.

6. In determining whether a Party is in conformity with its obligations under paragraph 5 above, account shall be taken of international standards of relevant international organisations^(Note) applicable to that Party.

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

Article 65 Monopolies and Exclusive Service Suppliers

1. Each Party shall ensure that any monopoly supplier of a service in its territory 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 territory in a manner inconsistent with such commitments.

3. If a Party has reason to believe that a monopoly supplier of a service of the other Party is acting in a manner inconsistent with paragraph 1 or 2 above, it may request the other Party 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 territory.

Article 66 Business Practices

1. The Parties recognise that certain business practices of service suppliers, other than those falling under Article 65 above, may restrain competition and thereby restrict trade in services.

2. A Party shall, at the request of the other Party, enter into consultations with a view to eliminating practices referred to in paragraph 1 above. The Party addressed shall accord full and sympathetic consideration to such a request and shall co-operate 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 domestic law and to the conclusion of a satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Party.

Article 67 Payments and Transfers

1. Except under the circumstances envisaged in Article 68 below, 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 (hereinafter referred to in this Chapter as "the Fund") under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement of the Fund, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except under Article 68 below, or at the request of the Fund.

Article 68
Restrictions to Safeguard the Balance of Payments
under Chapter 7

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 related to such commitments.

2. The restrictions referred to in paragraph 1 above:

- (a) shall not discriminate between the Parties;
- (b) shall ensure that the other Party is treated as favourably as any non-Party;
- (c) shall be consistent with the Articles of Agreement of the Fund;
- (d) shall avoid unnecessary damage to the commercial, economic and financial interests of the other Party;
- (e) shall not exceed those necessary to deal with the circumstances described in paragraph 1 above; and
- (f) 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 programmes. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular service sector.

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

5. Where a Party has adopted restrictions pursuant to paragraph 1 of this Article:

- (a) that Party shall commence consultations with the other Party promptly in order to review the restrictions adopted by the former Party;
- (b) the restrictions shall be subjected to annual review through further consultations, beginning one year after the date that the consultations referred to in sub-paragraph (a) above commenced. At these consultations, all restrictions applied for balance-of-payments purposes shall be reviewed. The Parties may also agree to a different frequency of such consultations;
- (c) such consultations shall assess the balance-of-payments situation of the Party concerned and the restrictions adopted or maintained under this Article, taking into account, inter alia, such factors as:
 - (i) the nature and extent of the balance-of-payments and the external financial difficulties;
 - (ii) the external economic and trading environment of the consulting Party; and
 - (iii) alternative corrective measures which may be available;
- (d) the consultations shall address the compliance of the restrictions with paragraph 2 of this Article, in particular the progressive phaseout of restrictions in accordance with sub-paragraph (f) of paragraph 2 of this Article; and
- (e) in such consultations, all findings of statistical and other facts presented by the Fund relating to foreign exchange, monetary reserves and balance-of-payments, shall be accepted and conclusions shall be based on the assessment by the Fund of the balance-of-payments and the external financial situation of the consulting Party.

Article 69
General Exceptions under Chapter 7

1. 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)

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;
- (d) inconsistent with Article 60, provided that the difference in treatment is aimed at ensuring the equitable or effective^(Note) imposition or collection of direct taxes in respect of services or service suppliers of the other Party.

Note: Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Party under its taxation system which:

- (i) apply to non-resident service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Party's territory;

- (ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Party's territory;
- (iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures;
- (iv) apply to consumers of services supplied in or from the territory of the other Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Party's territory;
- (v) distinguish service suppliers subject to tax on worldwide taxable items from other service suppliers, in recognition of the difference in the nature of the tax base between them; or
- (vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Party's tax base.

Tax terms or concepts in sub-paragraph (d) of paragraph 1 of Article 69 and in this note are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Party taking the measure.

2. In the application of paragraph 1 above, the relevant interpretations and operation of the WTO Agreement shall, where appropriate, be taken into account.

Article 70 Denial of Benefits

A Party may deny the benefits of this Chapter:

- (a) to the supply of any service, if it establishes that the service is supplied from or in the territory of a non-Party;
- (b) in the case of the supply of a maritime transport service, if it establishes that the service is supplied:
 - (i) by a vessel registered under the laws of a non-Party, and
 - (ii) by a person which operates or uses the vessel in whole or in part but which is of a non-Party;

- (c) to any service supplier that is a juridical person, if it establishes that the service supplier is neither a "service supplier of the other Party" as defined in sub-paragraph (j) of paragraph 6 of Article 58 nor a "service supplier other than those of the Parties" granted benefits under Article 62.

CHAPTER 8 INVESTMENT

Article 71 Scope of Chapter 8

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:
 - (a) investors of the other Party in the territory of the former Party; and
 - (b) investments of investors of the other Party in the territory of the former Party.
2. This Chapter shall not apply to government procurement.
3. Movement of natural persons who are investors shall be governed by Chapter 9.

Article 72 Definitions under Chapter 8

For the purposes of this Chapter:

- (a) the term "investments" means every kind of asset owned or controlled, directly or indirectly, by an investor, including:
 - (i) an enterprise;
 - (ii) shares, stocks or other forms of equity participation in an enterprise, including rights derived therefrom;
 - (iii) bonds, debentures, and loans and other forms of debt,^(Note) including rights derived therefrom;
 - (iv) rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts;