

Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the TBT Agreement”) issued by the World Trade Organisation Committee on Technical Barriers to Trade or any successor document.

Article 66

Conformity Assessment Procedures

Each Party shall utilise existing regional and international mutual recognition arrangements in relation to the acceptance of conformity assessment processes and procedures.

Article 67

Focal Point

For the purposes of this Chapter, each Party shall establish a focal point, with the objectives of:

- (a) facilitating technical consultations on any issue relating to technical regulations, standards and conformity assessment procedures that a Party may raise;
- (b) enhancing cooperation in the development and improvement of conformity assessment procedures;
- (c) facilitating, where appropriate, cooperation between governmental regulatory authorities, accreditation agencies and conformity assessment bodies in the respective territories; and
- (d) exchanging information on developments in national, regional and multilateral fora engaged in activities relating to standardisation, technical regulations, standards and conformity assessment procedures.

CHAPTER 8

TRADE IN SERVICES

Article 68

Scope and Coverage

1. This Chapter shall apply to measures adopted or maintained by a Party affecting trade in services by service suppliers of the other Party.

2. This Chapter shall not apply to:

- (a) services supplied in the exercise of governmental authority at the central, regional or local government levels;

Note: The term “regional” refers to a state of Malaysia and a province of Pakistan.

- (b) any measure by a Party with respect to government procurement;
- (c) subsidies or grants provided by a Party;
- (d) in respect of air transport services, traffic rights, however granted, or services directly related to the exercise of traffic rights, except measures affecting:
 - (i) aircraft repair and maintenance services;
 - (ii) the selling and marketing of air transport services; and
 - (iii) computer reservation system services.
- (e) cabotage in maritime transport services; and
- (f) measures affecting natural persons seeking access to the employment market of a Party, or measures regarding citizenship, residence or employment on a permanent basis.

3. Nothing in this Chapter shall prevent a Party from applying measures to regulate the entry of natural persons of the country of the other Party into, or their temporary stay in, its country's territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under the terms of this Chapter.

4. Article 98 shall apply, *mutatis mutandis*, to measures affecting the supply of service by a service supplier of the country of a Party through commercial presence in the territory of the other Party, regardless of whether or not such services sector is scheduled in a Party's Schedule of Specific Commitments in Annex 5.

Article 69

Definitions

For purposes of this Chapter:

- (a) "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) a juridical person is;
 - (i) "owned" by persons of the country of a Party if more than 50 per cent of the equity interest in it is beneficially owned by persons of that country;

- (ii) “controlled” by persons of the country of a 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;
- (c) “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 the country of a Party for the purposes of supplying a service;
- (d) “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;
- (e) “existing” means in effect on the date of entry into force of this Agreement;
- (f) “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;
- (g) “juridical person of another Party” means a juridical person which is either:
 - (i) constituted or otherwise organised under the law of the country of that other Party, and is engaged in substantive business operations in the territory of the country that Party;

Note: In order to prevent the possibility of companies of a third State unduly benefiting from this Agreement, companies of a third State registered in the territory of the country of another Party, their offices, liaison offices, “shell companies” and “mail box companies” and companies specifically established for providing certain services to their parent companies are not service

suppliers of another Party under this Agreement.

- (ii) in the case of the supply of a service through commercial presence, owned or controlled by:
 - (AA) natural persons of the country of that Party; or
 - (BB) juridical persons of the country of that other Party identified under subparagraph (i) of this paragraph;
- (h) “measures adopted or maintained by a Party” means any measure of a Party, whether in the form of laws, regulations, rules, procedures, decisions, and administrative actions or practice, adopted or maintained by:
 - (i) central, regional or local government or authorities; or
 - (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;
- (i) “measures adopted or maintained by a Party affecting trade in services” includes measures affecting:
 - (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; and
 - (iii) the presence, including commercial presence, of persons of the country of a Party for the supply of a service in the territory of the country of the other Party;
- (j) “monopoly supplier of a service” means any person, public or private, which in the relevant market of the territory of the country of a Party is authorised or established formally or in effect by that Party as the sole supplier of that service;
- (k) “natural person of the other Party” means a natural person who resides in the country of the other Party or elsewhere and who under the law of the country of the other Party;
 - (i) in respect of Malaysia, is a citizen of Malaysia or has the right of permanent residence in Malaysia; and
 - (ii) in respect of Pakistan, is a citizen of Pakistan or has the right of permanent residence in Pakistan;

- (l) “sector” of a service means with reference to a specific commitment, one or more, or all, sub-sectors of that service, as specified in a Party’s Schedule of Specific Commitments in Annex 5; or otherwise, the whole of that service sector, including all of its sub-sectors, as the case may be;
- (m) “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 or the applicable conditions;
- (n) “service consumer” means any person that receives or uses a service;
- (o) “service of the other Party” means a service which is supplied:
 - (i) from or in the territory of the country of the other Party, or in the case of maritime transport, by a vessel registered under the laws of the country of the other Party, or by a person of the country 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 country of the other Party;
- (p) “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) “service supplier” means any person that supplies a service;
- (r) “supply of a service” includes the production, distribution, marketing, sale and delivery of a service; and
- (s) “trade in services” means the supply of a service:
 - (i) from the territory of the country of one Party into the territory of the country of the other Party (“cross-border mode”);
 - (ii) in the territory of the country of one Party to the service consumer of the country of the other Party (“consumption abroad mode”);

- (iii) by a service supplier of the country of one Party, through commercial presence in the territory of the country of the other Party (“commercial presence mode”); and
- (iv) by a service supplier of the country of one Party, through presence of natural persons of the country of that Party in the territory of the country of the other Party (“presence of natural persons mode”).

Article 70

Market Access

1. Each Party shall accord to 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 5.

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 the entire territory of its country, unless otherwise specified in its Schedule of Specific Commitments in Annex 5 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, except 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 71

National Treatment

1. In the sectors inscribed in its Schedule of Specific Commitments in Annex 5, 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.
2. A Party may meet the requirement in paragraph 1 of this Article 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 compared to the like service or service suppliers of the other Party.
4. 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.

Article 72

Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to the Articles 70 and 71, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Party's Schedule of Specific Commitments in Annex 5.

Article 73

Schedule of Specific Commitments

1. Each Party shall set out in a schedule the specific commitments it undertakes under Articles 70, 71 and 72 in Annex 5.
2. With respect to sectors where the specific commitments are undertaken, each Schedule of Specific Commitments in Annex 5 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 sub-sectors where the specific commitments are undertaken and set out in Annex 5 any terms, limitations, conditions and qualifications, referred to in subparagraphs (a) and (b) of paragraph 2 of this Article, shall be limited to existing non-conforming measures.

4. With respect to sectors or sub-sectors as set out in Annex 5, any change or modification in the conditions by a Party shall not result in the decrease of benefits in relation to the prevailing conditions applied to service suppliers of the other Party present in the territory of the country of the Party, compared to the benefits immediately before such change or modification comes into effect.

Article 74

Modification of Schedules

1. A Party (hereinafter referred to in this Article as "modifying Party") may modify or withdraw any commitment in its Schedule of Specific Commitments in Annex 5 at any time from the date on which that commitment entered into force.

2. The modifying Party shall notify the other Party (hereinafter referred to in this Article as "the affected Party") of its intent to modify or withdraw a commitment pursuant to this Article no later than three months before the intended date of implementation of the modification or withdrawal.

3. The modifying Party may only modify or withdraw its commitments where the modifying Party makes any necessary compensatory adjustments to its Schedule of Specific Commitments to maintain a general level of mutually advantageous commitments that is not less favourable to trade in services than provided for in its Schedule prior to the modification.

4. Upon notification of a Party's intent to make such modification, the Parties shall consult and attempt to reach agreement on the necessary compensatory adjustment.

5. If agreement is not reached between the modifying Party and the affected Party on the necessary compensatory adjustment within three months, the affected Party may refer the matter to arbitration in accordance with the procedures set out in Chapter 12.

6. The modifying Party may not modify or withdraw its commitment until it has made the necessary adjustments in conformity with the findings of the arbitration referred to in paragraph 5 of this Article.

Article 75
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, in like services, to services and service suppliers of any third State.
2. The provisions of paragraph 1 of this Article shall not apply to any measure by a Party with respect to sectors, sub-sectors or activities, as set out in its Schedule of Specific Commitments in Annex 5.
3. If a Party has entered into an agreement on trade in services with a third State or enters into such an agreement after this Agreement enters into force, with respect to sectors, sub-sectors or activities included in its Schedule of Specific Commitments in Annex 5, it shall, upon the request of the other Party, consider according to services and service suppliers of the other Party, treatment no less favourable than that it accords to like services and service suppliers of that third State.

Article 76
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. Each Party shall ensure that its judicial, arbitral or administrative tribunals or procedures which provide for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services are open on a non-discriminatory basis to service suppliers of the other Party. 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. Paragraph 2 of this Article 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, the competent authorities of a Party shall promptly, after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Party shall provide, without undue delay, information concerning the status of the application.
5. With the objective of ensuring that domestic regulation, including measures relating to qualification requirements and procedures, technical standards and licensing requirements, do not constitute unnecessary

barriers to trade in services, the Parties shall jointly review the results of the negotiations on disciplines on these measures, pursuant to Article VI.4 of the GATS, with a view to their incorporation into this Agreement. The Parties note that such disciplines aim to ensure that such requirements are *inter alia*:

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

6. Pending the incorporation of disciplines pursuant to paragraph 5 of this Article, a Party shall not apply licensing and qualification requirements and technical standards that nullify or impair its obligations under this Chapter in a manner which:

- (a) does not comply with the criteria outlined in subparagraphs (a), (b) or (c) of paragraph 5 of this Article; and
- (b) could not reasonably have been expected of that Party at the time the obligations were undertaken.

7. In determining whether a Party is in conformity with its obligations under paragraph 6 of this Article, account shall be taken of international standards of relevant international organisations applied by that Party.

8. Each Party shall provide for adequate procedures to verify the competence of professionals of the country of the other Party.

Article 77

Mutual Recognition

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

2. Recognition referred to in paragraph 1 of this Article, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement between the Parties or may be accorded unilaterally. For the purposes of fulfilment, in whole or in part, of the obligation under paragraph 1 of this Article, the Parties have agreed to adopt the Framework on Mutual Recognition Arrangements as in Annex 6.

3. Where a Party recognises, by agreement or arrangement between the Party and a third State or unilaterally, the education or experience

obtained, requirements met or licences or certifications granted in the third State;

- (a) nothing in Article 75 shall be construed to require the Party to accord such recognition to the education or experience obtained, requirements met or licences 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 licences or certifications granted in the other Party should also be recognised.

4. Both Parties shall facilitate development of mutual recognition arrangements among professional or regulatory bodies through facilitating discussion among these bodies and exchange of information on focal points.

Article 78 Transparency

1. Each Party shall publish promptly, except in emergency situations, all relevant measures of general application which pertain to or affect the operation of this Chapter. International agreements pertaining to or affecting cross-border trade in services to which a Party is a signatory shall also be published.

2. Where publication as referred to in paragraph 1 of this Article is not practicable, such information shall be made otherwise publicly available.

3. Each Party shall respond promptly to all requests by the other Party for specific information on any of its measures of general application or international agreements within the meaning of paragraph 1 of this Article. Each Party shall also establish one or more enquiry points to provide specific information to the other Party, upon request, on all such matters.

Article 79 Monopolies and Exclusive Service Suppliers

1. Each Party shall ensure that any monopoly supplier of a service in its country's territory 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 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 country's territory 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) authorises or establishes a small number of service suppliers; and
- (b) substantially prevents competition among those suppliers in its country's territory.

Article 80 **Business Practices**

1. The Parties recognise that certain business practices of services suppliers, other than those falling under Article 79, may restrain competition and thereby restrict trade in services.

2. Each Party shall, at the request of the other Party, enter into consultations with a view to eliminating practices referred to in paragraph 1 of this Article. 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 other Party, subject to its domestic law and to the conclusion of satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Party.

Article 81 **Emergency Safeguard Measures**

1. The Parties shall initiate discussions within a year from the entry into force of this Agreement to develop mutually acceptable guidelines and procedures for the application of emergency safeguard measures. These guidelines and procedures shall be annexed to and shall form part of this Agreement.

2. Notwithstanding the provisions of paragraph 1 of this Article, if a Party deems to be affected by the negative impact caused by its specific commitments as set out in Annex 5, the Party may request to hold consultations with the other Party and the other Party shall respond such request in good faith.

3. In holding the consultations referred to in paragraph 2 of this Article, the Parties shall endeavour to reach a mutually acceptable solution within a reasonable time.

Article 82 **Payments and Transfers**

1. Except under the circumstances envisaged in Article 83, 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 (hereinafter referred to in this Article as “the Fund”) under the Articles of Agreement of the International Monetary Fund, as may be amended, 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 83, or at the request of the Fund.

Article 83 **Measures 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 of this Article shall:

- (a) ensure that the other Party is treated as favourably as any third State;
- (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 country of the other Party;
- (d) not exceed those necessary to deal with the circumstances described in paragraph 1 of this Article; and
- (e) be temporary and be phased out progressively as the situation specified in paragraph 1 of this Article improves.

3. In determining the incidence of such restrictions, a Party may give priority to the supply of services which are more essential to its economic or development programmes. However, such restrictions shall not be adopted or maintained for the purposes of protecting a particular service sector.

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

5. The Party adopting any restrictions under paragraph 1 of this Article may commence consultations, upon request by the other Party, in order to engage in exchange of information and provide clarification to enquiries from the other Party with respect to the restrictions adopted by it.

Article 84

Denial of Benefits

1. Subject to prior notification, a Party may deny the benefits of this Chapter to:

- (a) service suppliers of the other Party where the service is being supplied by a juridical person that is owned or controlled by persons of a third State and the juridical person has no substantive business operations in the territory of the country of the other Party; or
- (b) service suppliers of the other Party where the service is being supplied by a juridical person that is owned or controlled by persons of the denying Party and the juridical person has no substantive business operations in the territory of the country of the other Party.

2. 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 third State, and that denying Party:

- (a) does not maintain diplomatic relations with the third State; or
- (b) adopts or maintains measures with respect to the third State 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.

Article 85

Review of Commitments

The Parties shall consult within three years after entry into force of this Agreement or as otherwise agreed, regarding inclusion of new services sectors and sub-sectors, and progress made on paragraph 4 of Article 77, with a view to progressive liberalisation of the trade in services between them on a mutually advantageous basis.

Article 86

Sub-Committee on Trade in Services

1. For the purposes of the 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 9 shall be:

- (a) reviewing commitments, with respect to measures affecting trade in services in this Chapter, with a view to achieving further liberalisation on a mutually advantageous basis and securing an overall balance of rights and obligations;

- (b) reviewing the implementation and operation of this Chapter;
 - (c) reviewing and discussing issues concerning the effective implementation of Articles 77 and 81;
 - (d) reporting the outcome of discussions of the Sub-Committee to the Joint Committee; and
 - (e) carrying out any other functions as may be delegated by the Joint Committee in accordance with Article 8.
2. The Sub-Committee shall be:
- (a) composed of representatives of the Parties, and where appropriate, may invite representatives of relevant entities other than of the Parties with the necessary expertise relevant to the issues to be discussed; and
 - (b) co-chaired by officials of the Parties.

3. The Sub-Committee shall hold its inaugural meeting within one year of the entry into force of this Agreement. Subsequent meetings shall be held at such venues and times as the Parties may mutually agree.

CHAPTER 9 INVESTMENT

Article 87 Scope of Application

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 territory of the country of the former Party.
2. This Chapter shall apply to existing investments at the date of entry into force of this Agreement, as well as to investment made after the entry into force.
3. This Chapter shall not apply to claims or disputes arising out of events which occurred prior to its entry into force.
4. In the event of any inconsistency between this Chapter and Chapter 8:
- (a) with respect to matters covered by Articles 89, 90 and 92, Chapter 8 shall prevail to the extent of inconsistency; and