

CHAPTER-8 TRADE IN SERVICES

ARTICLE 8.1 Definitions

For the purposes of this Chapter:

“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;

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repair and maintenance services” means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance;

“commercial presence” means any type of business or professional establishment, including through:

- (a) the constitution, acquisition or maintenance of a juridical person, or
- (b) the creation or maintenance of a branch or a representative office, within the territory of a Party for the purpose of supplying a service;

“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;

“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;

A **“juridical person”** is:

- (a) owned by persons of a Party if more than 50 per cent of the equity interest in it is beneficially owned by persons of that Party;
- (b) 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;
- (c) 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;

“juridical person of the other Party” means a juridical person which is either:

- (a) constituted or otherwise organised under the law of the other Party, and is engaged in substantive business operations in the territory of that Party; or

- (b) in the case of the supply of a service through commercial presence, owned or controlled by:
 - (i) natural persons of that other Party; or
 - (ii) juridical persons of that other Party as identified under sub paragraph (g) (i);

“measure” means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;

“measures by a Party” means measures taken by:

- (a) central, regional, or local governments and authorities; and
- (b) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;

In fulfilling its obligations and commitments under this Chapter, each Party shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities and non-governmental bodies within its territory;

“measures by a Party affecting trade in services” include measures in respect of:

- (a) the purchase, payment or use of a service;
- (b) 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
- (c) the presence, including commercial presence, of persons of a Party for the supply of a service in the territory of the other Party;

“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;

“natural person of the other Party” means a natural person who resides in the territory of that Party or elsewhere, and who under the law of that Party:

- (a) is a national of that Party; or
- (b) has the right of permanent residence in that Party provided that such Party accords substantially the same treatment to its permanent residents as it does to its nationals in respect of measures affecting trade in services, provided that the Party is not obligated to accord to such permanent residents treatment more favourable than would be accorded by that Party to such permanent residents;

“person” means either a natural person or a juridical person;

“sector of a service” means,

- (a) with reference to a specific commitment, one or more, or all, subsectors of that service, as specified in a Party's Schedule,
- (b) otherwise, the whole of that service sector, including all of its subsectors;

“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;

“services” includes any service in any sector except services supplied in the exercise of governmental authority;

“service consumer” means any person that receives or uses a service;

“service of the other Party” means a service which is supplied:

- (a) 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 and/or its use in whole or in part; or
- (b) 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;

“service supplier” means any person that supplies a service;¹

“supply of a service” includes the production, distribution, marketing, sale and delivery of a service;

“trade in services” is defined as the supply of a service:

- (a) from the territory of a Party into the territory of the other Party (“cross-border”);
- (b) in the territory of a Party to the service consumer of the other Party (“consumption abroad”);
- (c) by a service supplier of a Party, through commercial presence in the territory of the other Party (“commercial presence”);

¹ Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e., the juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under this Chapter. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the territory where the service is supplied.

- (d) by a service supplier of a Party, through presence of natural persons of a Party in the territory of the other Party ("presence of natural persons"); and

"traffic rights" means the right 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 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.

ARTICLE 8.2

Scope and Coverage

1. This Chapter applies to measures by a Party affecting trade in services.
2. This Chapter does not apply to:
 - (a) laws, regulations, or requirements governing the procurement by government agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale;
 - (b) subsidies or grants except to the extent provided in Article 8.15 (Subsidies) on subsidies;
 - (c) services provided in the exercise of governmental authority;
 - (d) measures affecting air traffic rights or measures affecting services directly related to the exercise of air traffic rights, other than measures affecting:²
 - (i) aircraft repair and maintenance services;
 - (ii) the selling and marketing of air transport services;
 - (iii) computer reservation system services;
 - (iv) rental services of aircraft with crew; or
 - (v) air transport management services.
3. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures pertaining to citizenship, permanent residence or employment on a permanent basis.

² Notwithstanding subparagraphs (iv) and (v), this Chapter shall apply to measures affecting rental services of aircraft with crew and air transport management services only for a Party that opts to make commitments in relation to such services in accordance with Article 8.7 (Schedule of Specific Commitments).

4. The rights and obligations of the Parties in respect of Financial Services shall be governed by the Annex on Financial Services of the GATS, which are hereby incorporated into and made part of this Agreement.

5. The provisions of this Chapter shall be read with Annex 8C on Telecommunications Services and Annex 8D on Movement of Natural Persons.

ARTICLE 8.3

Market Access

1. With respect to market access through the modes of supply defined under "Trade in Services" in Article 8.1 (Definitions), 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.³

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, 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;⁴
- (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

³ If a Party undertakes a market-access commitment in relation to the supply of a service through the "cross-border" mode of supply referred to in the definition of "trade in services" in Article 8.1 (Definitions), 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 "commercial presence" mode of supply referred to in the definition of "trade in services" in Article 8.1 (Definitions), it is thereby committed to allow related transfers of capital into its territory.

⁴ Subparagraph 2(c) of Article 8.3 (Market Access) does not cover measures of a Party which limit inputs for the supply of services.

- (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.

3. Each Party shall endeavour to minimise requirements for a service supplier of the other Party to establish or maintain a representative office or any form of juridical person or to be resident in its territory, as a condition for the cross-border supply of a service.

ARTICLE 8.4

National Treatment

1. In the sectors inscribed in its Schedule of specific commitments, 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.⁵

2. A Party may meet the requirement of paragraph 1 by according to services and service suppliers of the other Party, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.

3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of a Party compared to like services or service suppliers of the other Party.

ARTICLE 8.5

Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 8.3 (Market Access) or 8.4 (National Treatment), including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Party's Schedule of specific commitments.

ARTICLE 8.6

Most Favoured Nation Treatment

If, after the date of entry into force of this Agreement, a Party enters into any agreement on trade in services with a non-Party, it shall give consideration to a request by the other Party for the incorporation herein of treatment no less favourable than that provided under the aforesaid agreement. Any such incorporation should maintain the overall balance of commitments undertaken by each Party under this Agreement.

⁵ 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.

ARTICLE 8.7

Schedule of Specific Commitments

1. Each Party shall set out, in a Schedule, the specific commitments it undertakes under Articles 8.3 (Market Access), 8.4 (National Treatment) and 8.5 (Additional Commitments). With respect to sectors where such commitments are undertaken, each Schedule of specific commitments shall specify:

- (a) terms, limitations and conditions on market access;
- (b) conditions and qualifications on national treatment;
- (c) undertakings relating to additional commitments;
- (d) where appropriate the time frame for implementation of such commitments; and
- (e) the date of entry into force of such commitments.

2. Measures inconsistent with both Articles 8.3 (Market Access) and 8.4 (National Treatment) shall be inscribed in the column relating to Article 8.3 (Market Access). In this case, the inscription will be considered to provide a condition or qualification to Article 8.4 (National Treatment) as well.

3. The Parties' Schedules of Specific Commitments shall be annexed to this Chapter as Annex 8A (for India) and Annex 8B (for the UAE) and shall form an integral part of this Agreement.

ARTICLE 8.8

Modification of Schedules

1. A Party may modify or withdraw any commitment in its Schedule, (referred to in this Article as the "modifying Party"), at any time after three (3) years have elapsed from the date on which that commitment entered into force, in accordance with the provisions of this Article. It shall notify the other Party of its intent to modify or withdraw a commitment no later than three months before the intended date of implementation of the modification or withdrawal.

2. At the request of the other Party, the modifying Party shall enter into negotiations with a view to reaching agreement on any necessary compensatory adjustment within six (6) months. In such negotiations and agreement, the Parties shall endeavour to maintain a general level of mutually advantageous commitments not less favourable to trade than that provided for in the Schedules of specific commitments prior to such negotiations. The Joint Committee shall be kept informed of the outcome of the negotiations.

3. If agreement is not reached between any affected Party and the modifying Party before the end of the period provided for negotiations, the affected Party may invoke the process in Chapter 15 (Dispute Settlement).

4. If an affected Party does not refer the matter to dispute settlement within sixty (60) days from the expiration of the period referred to in paragraph 3, the modifying Party shall be free to implement the proposed modification or withdrawal.

5. The modifying Party may not modify or withdraw its commitment until it has made compensatory adjustments in conformity with the findings of the arbitration panel established pursuant to Article 15.8 (Establishment of a Panel – Dispute Settlement).

6. If the modifying Party implements its proposed modification or withdrawal and does not comply with the findings of the arbitration panel established pursuant to Article 15.8 (Establishment of a Panel – Dispute Settlement), the affected Party may modify or withdraw substantially equivalent benefits in conformity with those findings.

ARTICLE 8.9

Review

1. The Parties shall endeavour to review this Chapter and specifically their Schedules of Specific Commitments at least once every two (2) years at the request of either Party, with a view to facilitating the reduction or elimination of substantially all remaining discrimination between the Parties with regard to trade in services covered in this Chapter over a period of time. In this process, there shall be due respect for the national policy objectives.

2. Any review pursuant to paragraph 1 shall be in conformity with Article V of the GATS.

ARTICLE 8.10

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 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,

- (a) within a reasonable period of time after the submission of an application considered complete under the laws and regulations of the Party, inform the applicant of the decision concerning the application;

- (b) in the case of an incomplete application, at the request of the applicant, identify all the additional information that is required to complete the application and provide the opportunity to remedy deficiencies within a reasonable timeframe;
- (c) at the request of the applicant, without undue delay provide, information concerning the status of the application; and
- (d) if an application is terminated or denied, to the maximum extent possible, inform the applicant in writing and without delay the reasons for such action. The applicant will have the possibility of resubmitting, at its discretion, a new application.

5. With a view to ensuring that 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 Chapter. 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;
- (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, for sectors where a Party has undertaken specific commitments and subject to any terms, limitations, conditions or qualifications set out therein, a Party shall not apply licensing and qualification requirements and procedures and technical standards that nullify or impair such specific commitments in a manner which:

- (a) does not comply with the criteria outlined in subparagraphs 5(a), 5(b), or 5(c); and
- (b) could not reasonably have been expected of that Party at the time the specific commitments in those sectors were made.

7. In determining whether a Party is in conformity with the obligation under paragraph 6, account shall be taken of international standards of relevant international organisations⁶ applied by that Party.

8. In sectors where specific commitments regarding professional services are undertaken, each Party shall provide for adequate procedures to verify the

⁶ The term “**relevant international organisations**” refers to international bodies whose membership is open to the relevant bodies of both Parties.

competence of professionals of the other Party in accordance with provisions of paragraph 5.

ARTICLE 8.11

Recognition

1. For the purposes of the fulfilment of its standards or criteria for the authorisation, licensing or certification of services suppliers, each Party shall give due consideration to any requests by the other Party to recognise the education or experience obtained, requirements met, or licenses or certifications granted in the other Party. Such recognition which may be achieved through harmonisation or otherwise may be based upon an agreement or arrangement with the other Party, or otherwise be accorded autonomously.

2. Where a Party recognises, by agreement or arrangement, the education or experience obtained, requirements met, or licenses or certifications granted in the territory of a non-party, that Party shall afford the other Party adequate opportunity to negotiate its accession to such an agreement or arrangement, whether existing or future, or to negotiate a comparable agreement or arrangement with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that the education or experience obtained, requirements met, or licenses or certifications granted in the territory of that other Party should also be recognised.

3. After the entry into force of this Agreement, the Parties shall encourage their relevant professional bodies in the service sectors of architecture, engineering, medical (doctors), dental, accounting and auditing, nursing, veterinary and company secretaries, to negotiate with the aim of concluding any such agreements or arrangements providing mutual recognition of the education or experience obtained, qualification requirements and procedures and licensing requirements and procedures, within a reasonable period of time. The Parties shall report periodically to the Joint Committee on progress and on impediments experienced.

4. In respect of regulated service sectors, other than those mentioned in paragraph 3, upon a request being made in writing by a Party to the other Party in such sector, the Parties shall encourage their respective professional bodies to negotiate, in that service sector, agreements for mutual recognition of education, or experience obtained, qualifications requirements and procedures, and licensing requirements and procedures in that service sector, with a view to the achievement of early outcomes. The Parties shall report periodically to the Joint Committee on progress and on impediments experienced.

5. The Parties agree that they shall not be responsible in any way for the settlement of disputes arising out of, or under the agreements or arrangements for mutual recognition concluded by their respective professional, standard-setting or regulatory bodies under the provisions of this Article and that the provisions of the Chapter 15 (Dispute Settlement) shall not apply to disputes arising out of, or under, the provisions of such agreements or arrangements.

6. The Parties agree to encourage, where possible, the relevant bodies in their respective territories to:

- (a) enhance cooperation on skill development and mutual recognition of qualifications;
- (b) organise bilateral discussions on particular skill sets and standards as per the requirements by each Party; and
- (c) pursue mutually acceptable standards and criteria for licensing and certification with respect to service sectors of mutual importance to the Parties.

ARTICLE 8.12

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 that 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 Schedule of 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 paragraphs 1 or 2, it may request the other Party, that is the Party establishing, maintaining or authorising such supplier, 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 8.13

Business Practices

1. The Parties recognise that certain business practices of service suppliers, other than those falling under Article 8.12 (Monopolies and Exclusive Service Suppliers), may restrain competition and thereby restrict trade in services.
2. A Party shall, at the request of the other Party (the "Requesting Party"), enter into consultations with a view to eliminating practices referred to in paragraph 1. The Party addressed (the "Requested Party") 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 Requested Party shall also provide other information available to the Requesting

Party, subject to its domestic laws and to the conclusion of satisfactory agreement concerning the safeguarding of its confidentiality by the Requesting Party.

ARTICLE 8.14

Safeguard Measures

1. Each Party shall review the treatment of emergency safeguard measures taking into account the results of negotiations pursuant to Article X of the GATS.
2. In the event a Party is considering initiating an emergency safeguard investigation pursuant to the results of the above referenced negotiations, a Party shall request consultations with the other Party.

ARTICLE 8.15

Subsidies

Each Party shall review the treatment of subsidies related to trade in services taking into account the development of the multilateral disciplines pursuant to paragraph 1 of Article XV of the GATS.

ARTICLE 8.16

Payments and Transfers

1. Except under the circumstances envisaged in Article 8.17 (Restrictions to Safeguard the Balance of Payments), 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 (IMF) under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except under Article 8.17 (Restrictions to Safeguard the Balance of Payments) or at the request of the IMF.

ARTICLE 8.17

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 in respect of which it has undertaken specific commitments, including on payments or transfers for transactions relating to such commitments. It is recognised that particular pressures on the balance-of-payments of a Party in the process of economic development may necessitate the use of restrictions to ensure, *inter alia*, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development.
2. The restrictions referred to in paragraph 1 shall:
 - (a) be applied in such a manner that the other Party is treated no less favourably than any country that is not a Party to this Agreement.

- (b) be consistent with the Articles of Agreement of the IMF;
- (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, the Parties 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, or any changes therein, shall be promptly notified to the other Party.

5. To the extent that it does not duplicate the process under WTO and IMF, the Party adopting any restrictions under paragraph 1 shall, upon request by the other Party, commence consultations with the other Party in order to review the restrictions adopted by it.

ARTICLE 8.18 Denial of Benefits

1. A Party may deny the benefits of this Chapter:

- (a) to the supply of a service, if it establishes that the service is supplied from or in the territory of a non-Party;
- (b) to a service supplier that is a juridical person, if it establishes that it is not a service supplier of the other Party.
- (c) 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 and/or uses the vessel in whole or in part but which is of a non-Party;

2. Subject to prior notification and consultation, a Party may also deny the benefits of this Chapter to the supply of a service from or in the territory of the other Party, if the Party establishes that the service is supplied by a service supplier that is owned or controlled by a person of a non-Party and the denying Party adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the service supplier.

ARTICLE 8.19
Movement of Natural Persons

1. The rights and obligations of the Parties in respect of the movement of natural persons of a Party supplying services shall be governed by the GATS Annex on Movement of Natural Persons Supplying Services, which is hereby incorporated into and form part of this Agreement.
2. Annex 8D (Movement of Natural Persons Supplying Services) sets out further rights and obligations regarding movement of natural persons of a Party supplying services.