

3. The Sub-Committee shall be:
 - (a) composed of representatives of the Governments of the Parties; and
 - (b) co-chaired by officials of the Governments of the Parties.
4. The Sub-Committee may invite representatives of relevant entities other than the Governments of the Parties with the necessary expertise relevant to the issues to be discussed.
5. The Sub-Committee shall meet at such venues and times as may be agreed by the Parties.

Chapter 6 Trade in Services

Article 73 Scope

1. This Chapter shall apply to measures by a Party affecting trade in services.
2. This Chapter shall not apply to:
 - (a) in respect of air transport services, measures affecting traffic rights, however granted or 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 (CRS) services;
 - (b) laws, regulations or requirements governing the procurement by governmental 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;
 - (c) cabotage in maritime transport services;
 - (d) measures affecting natural persons of a Party seeking access to the employment market of the other Party, or measures regarding nationality, or residence or employment on a permanent basis; and

- (e) subsidies provided by a Party or a state enterprise thereof, including grants, government-supported loans, guarantees and insurance.
3. Article 79 shall not apply to any measure by a Party pursuant to immigration laws and regulations.
4. This Chapter shall not prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, the former Party, 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 a specific commitment.
- Note: The sole fact of requiring a visa for natural persons of a certain nationality or citizenship and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.
5. Annex 6 provides supplementary provisions to this Chapter with respect to financial services.

Article 74 Definitions

For the 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) "commercial presence" means any type of business or professional establishment, including through:
 - (i) the constitution, acquisition or maintenance of a juridical person; or
 - (ii) the creation or maintenance of a branch or a representative office,within the Area of a Party for the purposes of supplying services;

- (c) "computer reservation system (CRS) services" means services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations may be made or tickets may be issued;
- (d) "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;
- (e) "juridical person of the other Party" means a juridical person which is either:
 - (i) constituted or organised under the law of the other Party; or
 - (ii) in the case of the supply of a service through commercial presence, owned or controlled by:
 - (A) natural persons of the other Party; or
 - (B) juridical persons of the other Party identified under subparagraph (i);
- (f) a juridical person is:
 - (i) "owned" by persons of a Party or a non-Party if more than 50 percent of the equity interests in it is beneficially owned by such persons;
 - (ii) "controlled" by persons of a Party or a non-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;
- (g) "measure" means any measure, including that of taxation, whether in the form of a law, regulation, rule, procedure, decision, administrative action or any other form;

- (h) "measures by a Party" means measures taken by:
 - (i) central or local governments and authorities of a Party; and
 - (ii) non-governmental bodies in the exercise of powers delegated by central or local governments or authorities of a Party;
- (i) "measures by a Party affecting trade in services" includes measures by a Party in respect of:
 - (i) the purchase, payment or use of services;
 - (ii) the access to and use of, in connection with the supply of services, services which are required by the Party to be offered to the public generally; and
 - (iii) the presence, including commercial presence, of persons of the other Party for the supply of services in the Area of the former Party;
- (j) "monopoly supplier of a service" means any person, public or private, which in the relevant market of the Area 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 under the law of the other Party:
 - (i) in respect of Brunei Darussalam, is a national of Brunei Darussalam or is a permanent resident in Brunei Darussalam; and
 - (ii) in respect of Japan, is a national of Japan;
- (l) "person" means either a natural person or a juridical person;
- (m) "sector" of a service means:
 - (i) 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 7; or
 - (ii) otherwise, the whole of that service sector, including all of its sub-sectors;

- (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 Area of the other Party, or in the case of maritime transport, by a vessel registered under the laws of the other Party, or by a person of the other Party which supplies the service through the operation of a vessel or its use in whole or in part; or
 - (ii) in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of the other Party;
- (p) "services" includes any service in any sector except services supplied in the exercise of governmental authority;
- (q) "services supplied in the exercise of governmental authority" means any services which are supplied neither on a commercial basis nor in competition with one or more service suppliers;
- (r) "service supplier" means any person that supplies a service;

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

- (s) "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;
- (t) "state enterprise" means an enterprise owned or controlled by a Party;

- (u) "supply of a service" includes the production, distribution, marketing, sale and delivery of a service;
- (v) "the 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;
- (w) "trade in services" means the supply of a service:
 - (i) from the Area of a Party into the Area of the other Party ("cross-border supply mode");
 - (ii) in the Area of a Party to the service consumer of the other Party ("consumption abroad mode");
 - (iii) by a service supplier of a Party, through commercial presence in the Area of the other Party ("commercial presence mode"); and
 - (iv) by a service supplier of a Party, through presence of natural persons of that Party in the Area of the other Party ("presence of natural persons mode"); and
- (x) "traffic rights" means the rights for scheduled and non-scheduled services to operate and/or to carry passengers, cargo and mail for remuneration or hire from, to, within, or over a Party, including points to be served, routes to be operated, types of traffic to be carried, capacity to be provided, tariffs to be charged and their conditions, and criteria for designation of airlines, including such criteria as number, ownership and control.

Article 75
Market Access

1. With respect to market access through the modes of supply defined in subparagraph (w) of Article 74, 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 7.

Note: If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (w)(i) of Article 74 and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (w)(iii) of Article 74, it is thereby committed to allow related transfers of capital into its Area.

2. In sectors where market-access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire Area, unless otherwise specified in its Schedule of Specific Commitments in Annex 7, are defined as:

- (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
- (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;

Note: This subparagraph does not cover measures of a Party which limit inputs for the supply of services.

- (d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;
- (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and
- (f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

Article 76 National Treatment

1. In the sectors inscribed in its Schedule of Specific Commitments in Annex 7, 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: Specific commitments assumed under this Article shall not be construed to require either Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

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

3. Formally identical or formally different treatment shall be considered to be less 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 77
Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 75 and 76, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Party's Schedule of Specific Commitments in Annex 7.

Article 78
Schedule of Specific Commitments

1. Each Party shall set out in a schedule the specific commitments it undertakes under Articles 75, 76 and 77. Schedules of Specific Commitments shall be annexed to this Agreement as Annex 7.

2. With respect to sectors where specific commitments are undertaken by each Party, its Schedule of Specific Commitments in Annex 7 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. Measures inconsistent with both Articles 75 and 76 shall be inscribed in the column relating to Article 75. This inscription will be considered to provide a condition or qualification to Article 76 as well.

Article 79
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 to like services and service suppliers of any non-Party.

2. Paragraph 1 shall not apply to any measure by a Party with respect to sectors, sub-sectors or activities, as set out in its Schedule in Annex 8.

3. If a Party has entered into an agreement on trade in services with a non-Party, or enters into such an agreement after this Agreement comes into force, with respect to sectors, sub-sectors or activities included in its Schedule in Annex 8, 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 non-Party pursuant to such an agreement.

Article 80 Qualifications, Technical Standards and Licensing

With a view to ensuring that measures by a Party relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, each Party shall endeavour to ensure that such measures:

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

Article 81 Mutual Recognition

1. A Party may recognise the education or experience obtained, requirements met, or licences or certifications granted in the other Party for the 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, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement between the Parties or may be accorded unilaterally.

3. Where a Party recognises, unilaterally or by agreement or arrangement between the Party and a non-Party, the education or experience obtained, requirements met or licences or certifications granted in the non-Party:

- (a) nothing in Article 79 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.

Article 82 Transparency

1. The competent authorities referred to in paragraph 2 of Article 3 shall endeavour, upon request by service suppliers of the other Party, to promptly respond to specific questions from, and provide information to, the service suppliers with respect to matters referred to in paragraph 1 of Article 3.

2. Within two years from the date of entry into force of this Agreement, each Party shall prepare, forward to the other Party and make public a list providing all existing measures, within the scope of this Chapter, which are inconsistent with Article 75 and/or 76, whether or not these measures are included in its specific commitments in Annex 7. The list shall include the following elements and shall be reviewed every three years and revised as necessary:

- (a) sector and sub-sector;
- (b) type of inconsistency (i.e. Market Access and/or National Treatment);
- (c) legal source or authority of the measure; and
- (d) succinct description of the measure.

Note: The list under this paragraph will be made solely for the purposes of transparency, and shall not be construed to affect any rights and obligations of a Party under this Chapter.

Article 83
Monopolies and Exclusive Service Suppliers

1. Each Party shall ensure that any monopoly supplier of a service in its Area does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with the Party's commitments under this Chapter.

2. Where a Party's monopoly supplier competes, either directly or through an affiliated juridical person, 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 the Area of the Party 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 Area.

Article 84
Payments and Transfers

1. Except under the circumstances envisaged in Article 85, 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 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, as may be amended, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except under Article 85, or at the request of the International Monetary Fund.

Article 85
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 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:

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

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

5. Where a Party has adopted restrictions pursuant to paragraph 1, that Party shall, upon request, commence consultations with the other Party promptly in order to review the restrictions adopted by the former Party.

Article 86
Denial of Benefits

1. A Party may deny the benefits of this Chapter to a service supplier of the other Party, where the denying Party establishes that the service is being supplied by a juridical person that is owned or controlled by persons of a non-Party, and that denying Party:

- (a) does not maintain diplomatic relations with the non-Party; or
- (b) adopts or maintains measures with respect to the non-Party that prohibit transactions with the juridical person or that would be violated or circumvented if the benefits of this Chapter were accorded to the juridical person.

2. Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to a service supplier of the other Party, where the denying Party establishes that the service is being supplied by a juridical person that is owned or controlled by persons of a non-Party and that has no substantive business operations in the Area of the other Party.

Article 87
Sub-Committee on Trade in Services

1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Trade in Services (hereinafter referred to in this Article as "Sub-Committee") shall be established on the date of entry into force of this Agreement.

2. The functions of the Sub-Committee 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) reporting the outcome of discussions of the Sub-Committee to the Joint Committee; and
- (d) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 11.

3. The Sub-Committee shall be:

- (a) composed of representatives of the Governments of the Parties; and
- (b) co-chaired by officials of the Governments of the Parties.

4. The Sub-Committee may invite representatives of relevant entities other than the Governments of the Parties with the necessary expertise relevant to the issues to be discussed.

5. The Sub-Committee may hold its inaugural meeting within two years from the date of entry into force of this Agreement. The subsequent meeting of the Sub-Committee shall be held at such frequency as the Parties may agree upon.

Article 88 Review of Commitments

1. The Parties shall review commitments on trade in services with the first review within two years from the date of entry into force of this Agreement, with the aim of improving the overall commitments undertaken by the Parties under this Agreement.

2. In reviewing the commitments in accordance with paragraph 1, the Parties shall take into account paragraph 1 of Article IV of the GATS.

Chapter 7 Energy

Article 89 Basic Principle

The Parties recognise the importance of strengthening stable and mutually beneficial relationship in the energy sector.

Article 90 Definitions

For the purposes of this Chapter:

- (a) "energy good" means any good classified in subheading 2709.00, 2711.11 and 2711.21 of the Harmonized System;