

CHAPTER 5 TRADE IN SERVICES

ARTICLE 5.1 Definitions

For the purposes of this Chapter:

- (a) **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;
- (b) **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repair and maintenance services** means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance;
- (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 a Party for the purpose 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) **direct taxes** comprise 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;
- (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, branch or association, and in the case of the GCC Member States, a fund or authority constituted to manage a pool of monies and/or other assets for a defined objective;
- (g) **juridical person** of a Party means a juridical person which is either:

- (i) constituted or otherwise organised under the law of that Party; or
 - (ii) in the case of the supply of a service through commercial presence, owned or controlled by:
 - (A) natural persons of that Party; or
 - (B) juridical persons of that Party identified under subparagraph g(i) of this Article;
- (h) **measure** means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;
- (i) **measures by a Party** means measures taken by:
 - (i) central, regional or local governments and authorities; and
 - (ii) 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;
- (j) **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 the Parties to be offered to the public generally;
 - (iii) the presence, including commercial presence, of persons of that Party for the supply of a service in the territory of another Party;
- (k) **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;
- (l) **natural person of a Party** means a natural person who is a national or permanent resident of a GCC Member State or Singapore, according to their respective legislation.

- (m) **person** means either a natural person or a juridical person;
- (n) **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,
 - (ii) otherwise, the whole of that service sector, including all of its subsectors;
- (o) **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 application conditions;
- (p) **services** includes any service in any sector except services supplied in the exercise of governmental authority;
- (q) **service consumer** means any person that receives or uses a service;
- (r) **service of a Party** means a service which is supplied:
 - (i) from or in the territory of that Party, or in the case of maritime transport, by a vessel registered under the laws of that Party, or by a person of that Party which supplies the service through the operation of a vessel and/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 that Party;
- (s) **service supplier** means any person that supplies or seeks to supply a service;³
- (t) **supply of a service** includes the production, distribution, marketing, sale and delivery of a service;
- (u) **trade in services** is defined as the supply of a service:
 - (i) from the territory of a Party into the territory of another Party

³ 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.

- ("cross-border");
- (ii) in the territory of a Party to the service consumer of another Party ("consumption abroad");
 - (iii) by a service supplier of a Party, through commercial presence in the territory of another Party ("commercial presence");
 - (iv) by a service supplier of a Party, through presence of natural persons of a Party in the territory of another Party ("presence of natural persons");
- (v) **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 5.2

Scope and Coverage

1. This Chapter applies to measures by a Party affecting trade in services.
2. This Chapter shall not apply to:
 - (a) subsidies or grants provided by a Party or to any conditions attached to the receipt or continued receipt of such subsidies or grants, whether or not such subsidies are offered exclusively to domestic services, service consumers or service suppliers, including government-supported loans, guarantees and insurance;
 - (b) a service supplied in the exercise of governmental authority within the territory of each respective Party;
 - (c) government procurement; or
 - (d) measures affecting air traffic rights, however granted; or to measures affecting services directly related to the exercise of air traffic rights, other than measures affecting:
 - (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;
- (v) air transport management services.

3. New services, including new financial services, shall be considered for possible incorporation into this Chapter either by the Joint Committee at future reviews held pursuant to Article 1.11, or, at the request of any Party, by all the Parties through the most convenient available means for consultations. The supply of services which are not technically or technologically feasible when this Agreement comes into force shall, when they become feasible, also be considered for possible incorporation into this Chapter either by the Joint Committee at future reviews held pursuant to Article 1.11, or, at the request of any Party, by all the Parties through the most convenient available means for consultations.

4. 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 regarding citizenship, residence or employment on a permanent basis.

5. Nothing in this Chapter shall prevent a Party from applying measures to regulate the entry of natural persons of another Party into, or their temporary stay in, its 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 benefits⁴ accruing to another Party under the terms of this Chapter.

6. For the purposes of this Chapter, the Annex on Telecommunications of the GATS in Annex 1A to the WTO Agreement is incorporated into and form an integral part of this Chapter.

ARTICLE 5.3

Market Access

1. With respect to market access through the modes of supply defined in subparagraph (u) of Article 5.1, each Party shall accord services and service suppliers of another Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule of specific commitments.⁵

⁴ The sole fact of requiring a visa for natural persons of a certain nationality and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.

⁵ If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in Article 5.1(u)(i) 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 Article 5.1(u)(iii), 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, are:

- (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 test⁶;
- (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 5.4 **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 another 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.⁷

⁶ Subparagraph 2(c) of Article 5.3 does not cover measures of a Party which limit inputs for the supply of services.

⁷ Specific commitments assumed under this Article shall not be construed to require any 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 of this Article by according to services and service suppliers of another 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 another Party.

ARTICLE 5.5

Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 5.3 or 5.4, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Party's Schedule of specific commitments.

ARTICLE 5.6

Schedule of Specific Commitments

1. Each Party shall set out in a Schedule the specific commitments it undertakes under Articles 5.3, 5.4 and 5.5. 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 5.3 and 5.4 shall be inscribed in the column relating to Article 5.3. In this case, the inscription will be considered to provide a condition or qualification to Article 5.4 as well.

3. The Schedules of specific commitments shall be annexed to this Chapter as Annexes 5 (GCC) and 6 (Singapore).

ARTICLE 5.7
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. If one or more of the GCC Member States or Singapore modifies or withdraws any commitment in its Schedule, the GCC or Singapore, as the case may be, shall notify each other of the modifying Party's 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.

2. At the request of the affected 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 any affected Party and the modifying Party 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 9 (Settlement of Disputes).

4. If an affected Party does not refer the matter to dispute settlement sixty (60) days from the expiration of the period referred to in paragraph 3 of this Article, 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 9.4.

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 9.4, the affected Party may modify or withdraw substantially equivalent benefits in conformity with those findings.

ARTICLE 5.8
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 another 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 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 authorization 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 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, does not constitute an unnecessary barrier to trade in services, the Parties shall jointly review the results of the negotiations on disciplines on these measures, pursuant to paragraph 4 of Article VI 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 of this Article, 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 technical standards that nullify or impair such specific commitments 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 specific commitments in those sectors were made.

7. In determining whether a Party is in conformity with the obligation under paragraph 6 of this Article, account shall be taken of international standards of relevant international organisations⁸ applied by that Party.

ARTICLE 5.9

Recognition

1. For the purposes of the fulfillment of its standards or criteria for the authorisation, licensing or certification of services suppliers, a Party may recognise the education or experience obtained, requirements met, or licenses or certifications granted in another Party.

2. The Parties shall encourage their relevant competent bodies to enter into negotiations on recognition of professional qualifications, licenses, or registration procedures with a view to the achievement of early outcomes.

3. Any arrangement reached pursuant to paragraph 2 of this Article shall be consistent with this Agreement.

ARTICLE 5.10

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 Schedule of 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 another Party is acting in a manner inconsistent with paragraphs 1 or 2 of this Article, it may request the Party establishing, maintaining or authorizing 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) authorizes or establishes a small number of service suppliers; and
- (b) substantially prevents competition among those suppliers in its

⁸ The term "*relevant international organisations*" refers to international bodies whose membership is open to the relevant bodies of the Parties.

territory.

ARTICLE 5.11

Business Practices

1. The Parties recognise that certain business practices of service suppliers, other than those falling under Article 5.10, may restrain competition and thereby restrict trade in services.
2. A Party shall, at the request of another 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 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 5.12

Payments and Transfers

1. Except under the circumstances envisaged in Article 5.13, 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 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 5.13 or at the request of the International Monetary Fund.

ARTICLE 5.13

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 obligations under Articles 5.3 and 5.4, including on payments or transfers for transactions relating to such obligations. 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 of this Article:
 - (a) shall not discriminate among WTO Members;
 - (b) shall be consistent with the Articles of Agreement of the International Monetary Fund;
 - (c) shall avoid unnecessary damage to the commercial, economic and financial interests of another Party;
 - (d) shall not exceed those necessary to deal with the circumstances described in paragraph 1 of this Article;
 - (e) shall 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, 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 of this Article, or any changes therein, shall be promptly notified to the affected Parties.
5. The Party adopting any restrictions under paragraph 1 of this Article shall commence consultations with all affected Parties in order to review the restrictions adopted by it.

ARTICLE 5.14 **Transparency**

1. Each Party shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of this Chapter. International agreements pertaining to or affecting 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 another 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 use the existing enquiry points or, when they do not exist, establish one or more enquiry points to provide specific information to another Party, upon request, on all such matters.

ARTICLE 5.15
Disclosure of Confidential Information

Nothing in this Chapter shall require any Party to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

ARTICLE 5.16
Denial of Benefits

1. Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to a service supplier of another Party if the service supplier is a juridical person owned or controlled by persons of a non-Party, and the denying Party:

- (a) does not maintain diplomatic relations with the non-Party; or
- (b) adopts or maintains measures with respect to the non-Party or a person of 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:

- (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) 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;
- (c) to a service supplier of another Party where the Party establishes that the service supplier is owned or controlled by persons of a non-Party and that it has no substantive business operations in the territory of a Party.

ARTICLE 5.17
Review of Commitments

If after this Agreement enters into force, a Party enters into any agreement on trade in services with a non-Party, it shall give sympathetic consideration to a request by another 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 a Party under this Agreement.

ARTICLE 5.18
Telecommunications Services

1. Negotiations on mutual liberalisation of telecommunications services shall be considered at future reviews held by the Joint Committee in accordance with Article 1.11.
2. The results of the negotiations referred to in paragraph 1 of this Article, if any, shall be incorporated into this Chapter in accordance with Article 10.2.