

## **CHAPTER 13**

### **TRADE IN SERVICES**

#### **Article 1 Objectives**

The objectives of this Chapter are to:

- (a) facilitate the expansion of trade in services on a mutually advantageous basis;
- (b) improve the efficiency and transparency of the Parties' respective services sectors and competitiveness of their export trade; and
- (c) work toward progressive liberalisation,

while recognising the right of each Party to regulate and introduce new regulations, and to provide and fund public services, in a manner that gives due respect to government policy objectives.

#### **Article 2 Scope**

1. This Chapter shall apply to measures adopted or maintained by a Party affecting trade in services.
2. This Chapter shall not apply to:
  - (a) government procurement;
  - (b) services supplied in the exercise of governmental authority;

- (c) subsidies<sup>10</sup> provided by a Party or a state enterprise thereof, including government-supported loans, guarantees and insurance, or to any conditions attached to the receipt or continued receipt of such subsidies, whether or not such subsidies are offered exclusively to domestic services, service consumers or service suppliers, except as provided for in Article 11;
- (d) measures affecting natural persons seeking access to the employment market of a Party; or
- (e) measures regarding citizenship, nationality, residence or employment.

3. This Chapter shall not apply to measures affecting air transport services or related services in support of air services except that this Chapter shall apply to measures affecting:

- (a) aircraft repair and maintenance services;
- (b) the selling and marketing of air transport services; and
- (c) computer reservation system services.

4. The Parties note the multilateral negotiations pursuant to the review of the *GATS Annex on Air Transport Services*. Upon the conclusion of such multilateral negotiations, the Parties shall conduct a review for the purpose of discussing appropriate amendments to this Agreement, so as to take into account the results of such multilateral negotiations.

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<sup>10</sup> Including grants.

### **Article 3 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repair and maintenance services** means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and does not include so-called line maintenance;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 the constitution, acquisition or maintenance of an enterprise, including a representative office, within the Area of a Party for the purpose of supplying a service;
- (c) **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;
- (d) **enterprise** means any entity constituted or organised under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organisation and a branch of an enterprise;
- (e) **enterprise of a Party** means an enterprise which is:
  - (i) organised or constituted under the law of that Party; or
  - (ii) in the case of the supply of a service through commercial presence, owned or controlled by:

- (1) natural persons of that Party; or
  - (2) an enterprise of that Party identified under sub-subparagraph (i);
- (f) **government procurement** means any law, regulation, requirement or procedure of general application 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;
- (g) **measure** means any measure, whether in the form of a law, regulation, rule, procedure, decision, administrative action or any other form;
- (h) **measures adopted or maintained by a Party** means measures taken by:
- (i) central or local governments and authorities; and
  - (ii) non-governmental bodies in the exercise of powers delegated by central or local governments or authorities.

Such measures include measures in respect of:

- (1) the purchase, payment or use of a service;
- (2) 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;
- (3) the presence, including commercial presence, of persons of a Party for the

supply of a service in the Area of the other Party;

- (i) **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;
- (j) **natural person** means:
  - (i) with respect to New Zealand, a New Zealand national or permanent resident under its domestic law; and
  - (ii) with respect to Hong Kong, China, a permanent resident of the Hong Kong Special Administrative Region of the People's Republic of China under its domestic law;
- (k) **person** means a natural person or an enterprise;
- (l) **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;
- (m) **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;

- (n) **service supplier of a Party** means a person of a Party that supplies, or seeks to supply, a service<sup>11</sup>;
- (o) **services** includes any service in any sector except services supplied in the exercise of governmental authority;
- (p) **state enterprise** means an enterprise that is owned or controlled through ownership interests by a Party;
- (q) **supply of a service** includes the production, distribution, marketing, sale and delivery of a service; and
- (r) **trade in services** means the supply of a service:
  - (i) from the Area of one Party into the Area of the other Party (Mode 1);
  - (ii) in the Area of one Party to the service consumer of the other Party (Mode 2);
  - (iii) by a service supplier of one Party, through commercial presence in the Area of the other Party (Mode 3); or
  - (iv) by a service supplier of one Party, through presence of natural persons of that Party in the Area of the other Party (Mode 4).

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<sup>11</sup> Where the service is not supplied directly by an enterprise but through other forms of commercial presence such as a representative office, the service supplier (i.e. the enterprise) 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 where the service is supplied.

#### **Article 4**

#### **Market Access**

Neither Party shall, either on the basis of a regional sub-division or on the basis of its entire Area, adopt or maintain:

- (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement 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<sup>12</sup>;
- (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; and
- (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

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<sup>12</sup> Subparagraph (c) does not cover measures of a Party which limit inputs for the supply of services.

**Article 5**  
**National Treatment**

1. 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<sup>13</sup>.
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 the Party compared to the like services or service suppliers of the other Party.

**Article 6**  
**Local Presence**

Neither Party may require a service supplier of the other Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its Area as a condition for the supply of cross-border trade in services.

**Article 7**  
**Application of Articles 4, 5, 6 and 12**

1. Articles 4, 5, 6 and 12 shall not apply to:

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<sup>13</sup> Obligations assumed under this Article by a Party except as set out in its Schedules to Annexes I and II shall not be construed to require that Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

- (a) any existing non-conforming measure that is maintained by a Party at:
  - (i) the central level of government, as set out by that Party in its Schedule to Annex I; or
  - (ii) a local level of government;
- (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
- (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 4, 5, 6 and 12.

2. Articles 4, 5, 6 and 12 do not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors or activities, as set out in its Schedule to Annex II.

### **Article 8 Review**

The Parties shall consult within two years of entry into force of this Agreement and at least every three years thereafter, or as otherwise agreed, to review the implementation of this Chapter and consider other trade in services issues of mutual interest, with a view to the progressive liberalisation of the trade in services between them on a mutually advantageous basis.

## **Article 9**

### **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 maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier, 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. Where authorisation is required for the supply of a service, the competent authorities of a Party shall:
  - (a) 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;
  
  - (b) within a reasonable period of time after the submission of an application considered complete under domestic law, inform the applicant of the decision concerning the application;
  
  - (c) at the request of the applicant, provide, without undue delay, 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.

4. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards, and licensing requirements and procedures do not constitute unnecessary barriers to trade in services, each Party shall ensure that any such measures that it adopts or maintains are:

- (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; and
- (d) subject to Paragraph 5 of Annex III, in compliance with the disciplines on domestic regulation in that Annex.

5. In determining whether a Party is in conformity with its obligations under Paragraph 4, account shall be taken of international standards of relevant international organisations<sup>14</sup> applied by that Party.

6. If the results of the negotiations related to Article VI(4) of *GATS* (or the results of any similar negotiations undertaken in other multilateral fora in which the Parties participate) enter into effect, the Parties shall jointly review such results. Where the joint review assesses that the incorporation of such results into this Agreement would improve or strengthen the disciplines contained herein, the Parties shall jointly

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<sup>14</sup> The term "relevant international organisations" refers to the international bodies whose membership is open to the Parties.

determine whether to incorporate such results into this Agreement.

7. Nothing in this Article and Annex III shall apply to any measure adopted or maintained by a Party consistent with its Schedules to Annexes I and II.

### **Article 10 Recognition**

1. 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, and subject to the requirements of Paragraph 4, a Party may recognise the education or experience obtained, requirements met, or licences or certification granted in the Area of the other Party.

2. Where a Party recognises, autonomously or by agreement or arrangement, the education or experience obtained, requirements met or licences or certification granted in the Area of a non-Party, nothing in Article 12 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 Area of the other Party.

3. A Party that is a party to an agreement or arrangement of the type referred to in Paragraph 2, whether existing or future, shall afford adequate opportunity for the other Party, upon request, to negotiate its accession to such an agreement or arrangement or to negotiate a comparable one with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that education or experience obtained, requirements met, or licences or certifications granted in that other Party's Area should be recognised.

4. A Party shall not accord recognition in a manner which would constitute a means of discrimination between

countries in the application of its standards or criteria for the authorisation, licensing or certification of service suppliers, or a disguised restriction on trade in services.

5. The Parties agree to facilitate the establishment of dialogue between their regulators and/or relevant industry bodies with a view to the achievement of early outcomes on recognition of qualifications and/or professional registration.

6. Such recognition may be achieved through harmonisation, recognition of regulatory outcomes, recognition of qualifications and professional registration awarded by one Party as a means of complying with the regulatory requirements of the other Party (whether accorded autonomously or by mutual arrangement) or recognition arrangements concluded between the Parties and between industry bodies.

### **Article 11 Subsidies**

Notwithstanding Paragraph 2(c) of Article 2:

- (a) the Parties shall review the issue of disciplines on subsidies related to trade in services in the light of any disciplines agreed under Article XV of *GATS*, with a view to the incorporation of such disciplines into this Agreement; and
- (b) a Party which considers that it is adversely affected by a subsidy of the other Party related to trade in services may request consultations on such matters. The Parties shall enter into such consultations.

### **Article 12 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 circumstances, to services and service suppliers of a non-Party.

2. Notwithstanding Paragraph 1, the Parties reserve the right to adopt or maintain any measure that accords differential treatment to non-Parties under any free trade agreement or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.

3. For greater certainty, Paragraph 2 includes, in respect of agreements on the liberalisation of trade in goods or services or investment, any measures taken as part of a wider process of economic integration or trade liberalisation between the parties to such agreements.

4. The Parties reserve the right to adopt or maintain any measure that accords differential treatment to non-Parties under any international agreement in force or signed after the date of entry into force of this Agreement involving:

- (a) aviation;
- (b) fisheries; and
- (c) maritime matters.

### **Article 13** **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 that Party's obligations under Articles 4, 5, 6 and 12 except as set out in its Schedules to Annexes I and II.

2. Where a Party's monopoly supplier of a service competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights, the Party shall ensure that such a supplier does not

abuse its monopoly position to act in its Area in a manner inconsistent with that Party's obligations under Articles 4, 5, 6 and 12 except as set out in its Schedules to Annexes I and II.

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, that Party may request the other Party establishing, maintaining or authorising such supplier to provide specific information concerning the relevant operations.

4. 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 14 Denial of Benefits**

1. Subject to prior notification wherever possible, and in any event subject to notification within ten working days of the decision, a Party may deny the benefits of this Chapter to a service supplier of the other Party where the Party establishes that:

- (a) the service is being supplied by an enterprise that is owned or controlled by persons of a non-Party and the enterprise has no substantive business operations in the Area of the other Party; or
- (b) the service is being supplied by an enterprise that is owned or controlled by persons of the denying Party and the enterprise has no substantive business operations in the Area of the other Party.

2. A Party that denies benefits pursuant to Paragraph 1 shall enter into consultations if requested by the other Party within 30 days following the receipt of the request. Any

consultations conducted pursuant to this Paragraph shall be without prejudice to the rights and obligations of the Parties under Chapter 16 (Dispute Settlement) or under the *WTO Dispute Settlement Understanding*.

### **Article 15** **Miscellaneous Provisions**

1. The *GATS Annex on Financial Services* and *Annex on Telecommunications* are incorporated into and made part of this Chapter, *mutatis mutandis*.
2. Additional provisions on education cooperation are set out in Annex IV.
3. Notwithstanding Article 7, Articles 4, 5, 6 and 12 do not apply to any measure affecting the presence of natural persons (Mode 4).
4. In accordance with Article 4 (Grant of Temporary Entry) of Chapter 14 (Movement of Business Persons), commitments in respect of the presence of natural persons (Mode 4) are set out in each Party's Schedule to Annex I of Chapter 14 (Movement of Business Persons).

### **Article 16** **Committee on Trade in Services**

1. For purposes of the effective implementation and operation of this Chapter and Chapter 14 (Movement of Business Persons), the Parties hereby establish a Committee on Trade in Services ("Committee on Services") to consider any matter arising under this Chapter and Chapter 14 (Movement of Business Persons).
2. The Committee on Services shall:

- (a) consider any matters related to the implementation of this Chapter and Chapter 14 (Movement of Business Persons);
- (b) review the implementation of this Chapter and Chapter 14 (Movement of Business Persons) and consider other trade in services issues of mutual interest pursuant to Article 8;
- (c) explore measures for the further expansion of trade in services between the Parties; and
- (d) take any other action it decides appropriate for the implementation of this Chapter and Chapter 14 (Movement of Business Persons).

3. The Committee on Services shall meet within the first year of the date of entry into force of this Agreement and subsequently thereafter as mutually determined by the Parties.

4. The Committee on Services may meet in person or via teleconference, video-conference or any other means mutually determined by the Parties. Should the Parties determine to meet in person, the venue for the meetings shall, unless the Parties determine otherwise, alternate between the Parties.

### **Article 17** **Contact Points**

1. Each Party shall designate a contact point for trade in services to facilitate communication between the Parties, and shall provide details of such contact point to the other Party.

2. The Parties shall notify each other promptly of any amendments to the details of their contact points.