

8. Replace Chapter 8 (Trade in Services) with:

## CHAPTER 8

### TRADE IN SERVICES

#### Article 1 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repair and maintenance services** means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and does not include so-called line maintenance;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 territory 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) **juridical person** means any entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or government-owned,

including any corporation, trust, partnership, joint venture, sole proprietorship or association;

- (e) **juridical person of a Party** means a juridical person which is either:
  - (i) constituted or otherwise organised under the law of that Party, and is engaged in substantive business operations in the territory of that Party or any other Party; or
  - (ii) in the case of 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 (e)(i);
- (f) for Thailand and Viet Nam, a juridical person is:
  - (i) **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;
  - (ii) **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;
  - (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 by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;

- (h) **measures by a Party affecting trade in services** includes measures in respect of:
- (i) the purchase or use of, or payment for, a service;
  - (ii) the access to and use of, in connection with the supply of a service, services which are required by those Parties to be offered to the public generally; and
  - (iii) the presence, including commercial presence, of persons of a Party for the supply of a service in the territory of the other Party;
- (i) **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;
- (j) **natural person of a Party** means a natural person who resides in the territory of that Party or elsewhere and who under the law of that Party:
- (i) is a national of that Party; or
  - (ii) has the right of permanent residence<sup>1</sup> in that Party, in the case of a Party which 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 no Party is obligated to accord to such permanent residents treatment more favourable than

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<sup>1</sup> Where a Party has made a reservation with respect to permanent residents in its schedules under this Agreement, that reservation shall not prejudice the Parties' rights and obligations in GATS.

would be accorded by that Party to such permanent residents;

- (k) **person** means a natural person or a juridical person;
- (l) **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 in Annex 2 (Schedules of Specific Commitments for Services) or Schedule in Annex 3 (Schedules of Reservations and Non-Conforming Measures for Investment and Services); and
  - (ii) otherwise, the whole of that service sector, including all of its subsectors;
- (m) **selling and marketing of air transport services** means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services nor the applicable conditions;
- (n) **services** includes any service in any sector except services supplied in the exercise of governmental authority;
- (o) **service consumer** means any person that receives or uses a service;
- (p) **service of another Party** means a service which is supplied:

- (i) from or in the territory of that other Party, or in the case of maritime transport, by a vessel registered under the laws and regulations of that other Party, or by a person of that 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 that other Party;
- (q) **service supplier** means a person that supplies a service;<sup>2, 3</sup>
- (r) **supply of a service** includes the production, distribution, marketing, sale and delivery of a service;
- (s) **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;
- (t) **trade in services** means the supply of a service:
  - (i) from the territory of one Party into the territory of any other Party;

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<sup>2</sup> 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 Agreement. 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.

<sup>3</sup> The Parties confirm their shared understanding that “service supplier” in this Chapter has the same meaning that it has under Subparagraph (g) of Article XXVIII of GATS.

- (ii) in the territory of one Party to the service consumer of any other Party;
  - (iii) by a service supplier of one Party, through commercial presence in the territory of any other Party;
  - (iv) by a service supplier of one Party, through presence of natural persons of a Party in the territory of any other Party; and
- (u) **traffic rights** means the rights for scheduled and non-scheduled services to operate or 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 2**

### **Scope**

1. This Chapter shall apply to measures by a Party affecting trade in services.
2. For the purposes of this Chapter, “measures by a Party” means measures taken by:
  - (a) central, regional or local governments and authorities of that Party; and
  - (b) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities of that Party.

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.

3. This Chapter shall not apply to:
- (a) government procurement;
  - (b) subsidies or grants including government supported loans, guarantees and insurance, 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 or grants are offered exclusively to domestic services, service consumers or service suppliers;
  - (c) services supplied in the exercise of governmental authority;
  - (d) cabotage in maritime transport services; and
  - (e) air transport services, measures affecting traffic rights however granted, or measures affecting services directly related to the exercise of traffic rights, other than measures affecting:<sup>4</sup>
    - (i) aircraft repair and maintenance services;
    - (ii) the selling and marketing of air transport services;
    - (iii) computer reservation system services;

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<sup>4</sup> Notwithstanding Subparagraphs (iv) to (vi), this Chapter shall apply to measures affecting specialty air services, ground handling services, and airport operation services only for a Party that opts to make commitments in relation to such services in accordance with Article 3 (Scheduling of Commitments).



- (iv) specialty air services;
- (v) ground handling services; and
- (vi) airport operation services.

4. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of another Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.

5. For greater certainty, Annex 8A (Financial Services), Annex 8B (Telecommunications), Annex 8C (Professional Services) and Annex 8D (Education Services Co-operation) are an integral part of this Chapter.

### **Article 3 Scheduling of Commitments**

1. Each Party shall make commitments under Article 4 (National Treatment) and Article 5 (Market Access) in accordance with either Article 11 (Schedules of Specific Commitments) or Article 12 (Schedules of Non-Conforming Measures).

2. A Party making commitments in accordance with Article 11 (Schedules of Specific Commitments) shall make commitments under the applicable paragraphs in Article 4 (National Treatment), Article 5 (Market Access) and Article 9 (Most-Favoured-Nation Treatment). A Party making commitments in accordance with Article 11 (Schedules of Specific Commitments) may also make commitments under Article 6 (Additional Commitments).

3. A Party making commitments in accordance with Article 12 (Schedules of Non-Conforming Measures) shall make commitments under the applicable paragraphs in Article 4 (National Treatment), Article 5 (Market Access), Article 9 (Most-Favoured Nation Treatment) and Article 10 (Local

Presence). A Party making commitments in accordance with Article 12 (Schedules of Non-Conforming Measures) may also make commitments under Article 6 (Additional Commitments).

#### **Article 4 National Treatment**

1. A Party making commitments in accordance with Article 11 (Schedules of Specific Commitments) shall, in the sectors inscribed in its Schedule in Annex 2 (Schedules of Specific Commitments for Services) and subject to any conditions and qualifications set out therein, accord to services and service suppliers of any other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords, in like circumstances,<sup>5</sup> to its own services and service suppliers.<sup>6</sup>

2. A Party making commitments in accordance with Article 12 (Schedules of Non-Conforming Measures) shall accord to services and service suppliers of any other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords, in like circumstances, to its own services and service suppliers, subject to its non-conforming measures as provided in Article 12 (Schedules of Non-Conforming Measures).<sup>7</sup>

3. A Party may meet the requirement under Paragraph 1 or 2 by according to services and service suppliers of any other Party, either formally identical treatment or formally

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<sup>5</sup> For greater certainty, whether treatment is accorded in “like circumstances” under Article 4 (National Treatment) or Article 9 (Most-Favoured-Nation Treatment) depends on the totality of the circumstances, including whether services and service suppliers are like, and whether the relevant treatment distinguishes between services or service suppliers on the basis of legitimate public welfare objectives.

<sup>6</sup> 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.

<sup>7</sup> Nothing in this Article shall 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.

different treatment to that it accords to its own like services and service suppliers.

4. 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 like services or service suppliers of any other Party.

## **Article 5 Market Access**

1. With respect to market access through the modes of supply identified in Article 1(t) (Definitions), a Party making commitments in accordance with Article 11 (Schedules of Specific Commitments) shall accord services and service suppliers of any other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Annex 2 (Schedules of Specific Commitments for Services).<sup>8</sup>

2. The measures which a Party shall not adopt or maintain either on the basis of a regional subdivision or on the basis of its entire territory, either in sectors where market access commitments are undertaken and in accordance with its specific commitments, as provided in Article 11 (Schedules of Specific Commitments), or subject to its non-conforming measures, as provided in the Article 12 (Schedules of Non-Conforming Measures), are defined as:

- (a) limitations on the number of service suppliers whether in the form of numerical quotas,

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<sup>8</sup> If a Party undertakes a market-access commitment in relation to the supply of a services through the mode of supply referred to in Article 1(t)(i) (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 mode of supply referred to in of Article 1(t)(iii) (Definitions), it is hereby committed to allow related transfers of capital into its territory.

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 services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;<sup>9</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;
- (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 6**

### **Additional Commitments**

1. The Parties may negotiate commitments with respect to measures affecting trade in services including those regarding

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<sup>9</sup> Subparagraph (c) does not cover measures of a Party which limit inputs for the supply of services.

qualifications, standards or licensing matters not subject to scheduling, under:

- (a) Article 4 (National Treatment), Article 5 (Market Access) or Article 9 (Most-Favoured-Nation Treatment) for those Parties making commitments in accordance with Article 11 (Schedules of Specific Commitments); or
- (b) Article 4 (National Treatment), Article 5 (Market Access), Article 9 (Most-Favoured-Nation Treatment) or Article 10 (Local Presence) for those Parties making commitments in accordance with Article 12 (Schedules of Non-Conforming Measures).

2. A Party making additional commitments under Paragraph 1(a) shall inscribe such commitments in its Schedule in Annex 2 (Schedules of Specific Commitments for Services).

3. A Party making additional commitments under Paragraph 1(b) shall inscribe such commitments in List C of its Schedule in Annex 3 (Schedules of Reservations and Non-Conforming Measures for Investment and Services).

## **Article 7**

### **Review of Commitments**

The Parties shall review the commitments on trade in services, as necessary, but no later than the next general review of this Agreement under Article 10 (Review) of Chapter 21 (Final Provisions), with a view to further improving commitments under this Chapter so as to progressively liberalise trade in services among the Parties.

## **Article 8**

### **Work Programme**

1. Within one year of the date of entry into force of the Second Protocol, the Parties shall commence negotiations on an article that requires:

- (a) Parties making commitments in accordance with Article 11 (Schedule of Specific Commitments) (“transitioning Party” for the purposes of this Article) to submit a proposed Schedule of Non-Conforming Measures that accords with Article 12 (Schedules of Non-Conforming Measures) (“Proposed Schedule” for the purposes of this Article); and
- (b) that the commitments contained in a transitioning Party’s Proposed Schedule provide an equivalent or greater level of liberalisation, and not result in a decrease in the level of commitments, as compared to the transitioning Party’s commitments made in accordance with Article 11 (Schedules of Specific Commitments).

2. The article referred to in Paragraph 1 shall set out a fixed time frame, to be agreed by the Parties, for:

- (a) the submission of a transitioning Party’s Proposed Schedule; and
- (b) the conclusion of negotiations on, and adoption of, a transitioning Party’s Proposed Schedule,

and shall take into account any transition to Schedules of Non-Conforming Measures occurring pursuant to other international agreements that all Parties to this Agreement are party to.

3. The Parties shall endeavour to conclude the negotiations referred to in Paragraph 1 within two years of the date of entry into force of the Second Protocol.

4. Upon the conclusion of the negotiations referred to in Paragraph 1, the Parties shall amend this Chapter in accordance with Article 6 (Amendments) of Chapter 21 (Final Provisions) to incorporate the article referred to in Paragraph 1.

### **Article 9** **Most-Favoured-Nation Treatment**

1. A Party making commitments in accordance with Article 11 (Schedules of Specific Commitments) that makes commitments on Most-Favoured-Nation Treatment shall, in respect of the sectors and subsectors inscribed in its Schedule in Annex 2 (Schedules of Specific Commitments for Services) that are identified with an “MFN” and subject to any conditions and qualifications set out therein, 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, in like circumstances, to services and service suppliers of any other Party or of any non-Party.

2. A Party making commitments in accordance with Article 12 (Schedules of Non-Conforming Measures) shall, subject to its non-conforming measures set out in its Schedule in Annex 3 (Schedules of Reservations and Non-Conforming Measures for Investment and Services), 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, in like circumstances, to services and service suppliers of any other Party or of any non-Party.

3. Notwithstanding Paragraphs 1 and 2, each Party reserves the right to adopt or maintain any measure that accords differential treatment to services and service suppliers of any other Party or of any non-Party under any

bilateral or multilateral international agreement in force at, or signed prior to, the date of entry into force of the Second Protocol.

4. Notwithstanding Paragraphs 1 and 2, each Party which is an ASEAN Member State reserves the right to adopt or maintain any measure that accords differential treatment to services and service suppliers of any other Party which is an ASEAN Member State taken under an agreement on the liberalisation of trade in goods or services or investment as part of a wider process of economic integration among the ASEAN Member States.

5. The provisions of this Chapter shall not be construed as to prevent any Party from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.

6. Notwithstanding Paragraphs 1 and 2, Least Developed Country Parties are not obliged to make commitments under this Article. These Parties may, however, do so on a voluntary basis.

## **Article 10** **Local Presence**

A Party making commitments in accordance with Article 12 (Schedules of Non-Conforming Measures) shall not require a service supplier of another Party to establish or maintain a representative office, a branch, or any form of juridical person, or to be resident, in its territory as a condition for the supply of a service as described in Article 1(t)(i), (iii) or (iv) (Definitions), subject to its non-conforming measures as provided in Article 12 (Schedules of Non-Conforming Measures).



## **Article 11**

### **Schedules of Specific Commitments**

1. A Party making commitments in accordance with this Article shall set out in its Schedule in Annex 2 (Schedules of Specific Commitments for Services), the specific commitments it undertakes under Article 4 (National Treatment), Article 5 (Market Access), Article 6 (Additional Commitments) and Article 9 (Most-Favoured-Nation Treatment). With respect to sectors where such commitments are undertaken, each schedule in Annex 2 (Schedules of Specific Commitments for Services) shall specify:

- (a) terms, limitations and conditions on market access;
- (b) conditions and qualifications on national treatment;
- (c) undertakings relating to additional commitments;
- (d) the sectors that are committed for Most-Favoured-Nation Treatment in accordance with Article 9.1 (Most-Favoured-Nation Treatment);
- (e) where appropriate, the time frame for implementation of such commitments; and
- (f) the date of entry into force of such commitments.

2. Measures inconsistent with both Article 4 (National Treatment) and Article 5 (Market Access) shall be inscribed in the column relating to Article 5 (Market Access). In this case, the inscription will be considered to provide a condition or qualification to Article 4 (National Treatment) as well.

3. Each Party making commitments in accordance with this Article shall identify in its Schedule in Annex 2 (Schedules of Specific Commitments for Services) sectors or subsectors for

future liberalisation with “FL”. In these sectors and subsectors, any applicable terms, limitations, conditions and qualifications, referred to in Paragraph 1(a) to (c) shall be limited to existing measures of that Party.

4. If a Party amends a measure referred to in Paragraph 3 in a manner that reduces or eliminates the inconsistency of that measure with Article 4 (National Treatment), Article 5 (Market Access) or Article 9 (Most-Favoured-Nation Treatment), as it existed immediately before the amendment, that Party shall not subsequently amend that measure in a manner that increases the measure’s inconsistency with Article 4 (National Treatment), Article 5 (Market Access) or Article 9 (Most-Favoured-Nation Treatment).

5. Least Developed Country Parties are not required to identify sectors or subsectors for future liberalisation under Paragraph 4. These Parties, however, may do so on a voluntary basis.

## **Article 12**

### **Schedules of Non-Conforming Measures**

1. For a Party making commitments in accordance with this Article, Article 4 (National Treatment), Article 5 (Market Access), Article 9 (Most-Favoured-Nation Treatment) and Article 10 (Local Presence) shall not apply to:

- (a) any existing non-conforming measure that is maintained by that Party at:
  - (i) the central level of government, as set out by that Party in List A of its Schedule in Annex 3 (Schedules of Reservations and Non-Conforming Measures for Investment and Services);
  - (ii) a regional level of government, as set out by that Party in List A of its Schedule in Annex

3 (Schedules of Reservations and Non-Conforming Measures for Investment and Services); or

- (iii) a local level of government;
- (b) the continuation or prompt renewal of any non-conforming measure referred to in Subparagraph (a); and
- (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 Article 4 (National Treatment), Article 5 (Market Access), Article 9 (Most-Favoured-Nation Treatment) or Article 10 (Local Presence).

2. Article 4 (National Treatment), Article 5 (Market Access), Article 9 (Most-Favoured-Nation Treatment) and Article 10 (Local Presence) shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities set out in List B of its Schedule in Annex 3 (Schedules of Reservations and Non-Conforming Measures for Investment and Services).

### **Article 13 Modification of Schedules**

1. A Party may modify or withdraw any commitment in its schedule of specific commitments in Annex 2 (Schedules of Specific Commitments for Services) or Annex 4 (Schedules of Specific Commitments on the Movement of Natural Persons), at any time after three years have elapsed from the date on which this Agreement enters into force, in accordance with the procedures set out in Article XXI of GATS, *mutatis mutandis*, and the Procedures for the Implementation of Article XXI of GATS set out in WTO document S/L/80 of 29 October 1999

(the GATS Article XXI Procedures), *mutatis mutandis*, as amended from time to time.

2. For the avoidance of doubt, references in Article XXI of GATS and the GATS Article XXI Procedures to the “Secretariat” and the “Council for Trade in Services” shall each be read as references to the FTA Joint Committee.

## **Article 14**

### **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, on 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. Nothing in Paragraph 2 shall 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. If the results of the negotiations related to Paragraph 4 of Article VI of GATS enter into effect, the Parties shall review the results of such negotiations and shall amend this Article as appropriate, after consultation among the Parties to bring the results of such negotiations into effect under this Chapter.

5. 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, while recognising the right to regulate and to introduce new regulations on the supply of services in order to meet its policy objectives, each Party shall endeavour to 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; and
- (c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

6. In determining whether a Party is in conformity with its obligations under Paragraph 5(a), international standards of relevant international organisations<sup>10</sup> applied by that Party shall be taken into account.

7. Where a Party requires authorisation for the supply of a service it shall ensure that its competent authorities:

- (a) ensure that any authorisation fees charged for the completion of relevant application procedures are reasonable, transparent, and do not in themselves restrict the supply of a service. For the purposes of this Subparagraph, authorisation fees do not include fees for the use of natural resources, payment for auction, tendering, or other non-discriminatory means of awarding concessions, or mandated contributions to universal services provision;

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<sup>10</sup> "Relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of all the Parties.

- (b) within a reasonable period of time after the submission of an application considered complete under its laws and regulations, inform the applicant of the decision concerning the application;
- (c) to the extent practicable, establish an indicative time frame for processing of an application;
- (d) on request of the applicant, provide, without undue delay, information concerning the status of the application under consideration;
- (e) in the case of an incomplete application and on request of the applicant, identify, where practicable, all the additional information that is required to complete the application, and provide the opportunity to remedy deficiencies within a reasonable time frame;
- (f) if an application is terminated or denied, to the extent possible and without undue delay, inform the applicant in writing the reasons for such action. The applicant will have the possibility of resubmitting, at its discretion, a new application;
- (g) to the extent permissible under its laws and regulations, do not require physical presence in the territory of a Party for the submission of an application for a licence or qualification;
- (h) endeavour to accept applications in electronic format under the equivalent conditions of authenticity as paper submissions, in accordance with its laws and regulations; and
- (i) where they deem appropriate, accept copies of documents authenticated in accordance with its

laws and regulations, in place of original documents.

8. Each Party shall provide adequate procedures to verify competence of professionals of another Party. If licensing or qualification requirements include the completion of an examination, each Party shall, to the extent practicable, ensure that:

- (a) the examination is scheduled at reasonable intervals; and
- (b) a reasonable period of time is provided to enable interested persons to submit an application.

9. Each Party shall, subject to its laws and regulations, permit service suppliers of the other Parties to use without undue restrictions, the business names under which they trade in the territory of that other Party.

### **Application Time Frames**

10. If a Party requires authorisation for the supply of a service, it shall endeavour to ensure that its competent authorities, to the extent practicable and subject to its laws and regulations, permit submission of an application at any time throughout the year.<sup>11</sup> If a specific time period for applying exists, the Party shall ensure that the competent authorities allow a reasonable period for the submission of an application.<sup>12</sup>

11. Paragraphs 1 to 10 shall not apply to a sector or measure to the extent that such sector or measure is not subject to Article 4 (National Treatment) or Article 5 (Market

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<sup>11</sup> Competent authorities are not required to start considering applications outside of their official working hours and working days.

<sup>12</sup> Notwithstanding this Paragraph, Least Developed Country Parties are not obliged to apply this Paragraph for two years after the date of entry into force of the Second Protocol.

Access) by reason of a Party's commitments made in accordance with either Article 11 (Schedules of Specific Commitments) or Article 12 (Schedules of Non-Conforming Measures).

## **Article 15 Transparency**

1. The Parties recognise that transparent measures governing trade in services are important in facilitating the ability of service suppliers to gain access to, and operate in, each other's markets. Each Party shall promote regulatory transparency in trade in services.

### **Publication**

2. Each Party shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force:

- (a) all relevant measures of general application affecting trade in services; and
- (b) all international agreements pertaining to, or affecting, trade in services to which a Party is a signatory.

3. To the extent possible, each Party shall make the measures and international agreements of the kind referred to in Paragraph 2 available on the internet.

4. Where publication referred to in Paragraphs 2 and 3 is not practicable, such information<sup>13</sup> shall be made otherwise publicly available.

5. To the extent provided for under its legal framework, each Party shall endeavour to provide a reasonable

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<sup>13</sup> For greater certainty, such information may be published in each Party's chosen language.



opportunity for comments by interested persons of the Parties on measures referred to in Paragraph 2(a) before adoption.

6. Each Party shall designate a contact point to facilitate communications among the Parties on any matter covered by this Chapter. Upon the request of another Party, the contact point shall:

- (a) identify the office or official responsible for the relevant matter; and
- (b) assist as necessary in facilitating communications with the requesting Party with respect to that matter.

7. Each Party shall respond promptly to all requests by any other Party for specific information on:

- (a) any measures referred to in Paragraph 2(a) or international agreements referred to in Paragraph 2(b); and
- (b) any new, or any changes to existing, laws, regulations or administrative guidelines which significantly affect trade in services covered by the Party's commitments under this Chapter, whether or not the other Party has been previously notified of the new or changed law, regulation or administrative guideline.

## **Article 16**

### **Development and Application of Regulations**

#### **Administrative Processes**

1. With a view to administering in a consistent, impartial and reasonable manner its laws, regulations, procedures and administrative rulings of general application affecting trade in services, each Party shall ensure that its administrative

agencies, in applying such laws, regulations, procedures and administrative rulings to particular services or service suppliers of another Party in specific cases through administrative processes, including adjudication, rule-making, licensing, determination and approval processes:

- (a) to the extent provided under its legal framework, and where possible, provide service suppliers of the other Party that are directly affected by an administrative process with reasonable notice that the process is taking place;
- (b) to the extent provided under its legal framework, endeavour to afford such service suppliers with reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the process and the public interest permit; and
- (c) follow procedures that are in accordance with its laws.

## **Review and Appeal**

2. Each Party shall maintain judicial, arbitral or administrative tribunals or procedures for the purpose of the prompt review,<sup>14</sup> and, where warranted, correction of final administrative actions resulting from the processes covered by Paragraph 1. Where such procedures or tribunals are not independent of the agency entrusted with the administrative action concerned, each Party shall ensure that the tribunals or procedures provide for an objective and impartial review.

3. Each Party shall ensure that, in any such tribunal or under any such procedures, the parties to any proceedings are provided with the right to:

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<sup>14</sup> For avoidance of doubt, "review" includes merits review only where provided for under the Party's laws.

- (a) a reasonable opportunity to support or defend their respective positions; and
- (b) a decision in accordance with the Party's laws.

4. Each Party shall ensure, subject to appeal or further review as provided in its laws, that any decision referred to in Paragraph 3(b) shall be implemented in accordance with its laws.

### **Article 17**

#### **Disclosure of Confidential Information**

Nothing in this Chapter shall be construed as requiring a Party to provide to the other Parties confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or which would prejudice the legitimate commercial interests of particular juridical persons, public or private.

### **Article 18**

#### **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 obligations under Article 4 (National Treatment) and Article 5 (Market Access).

2. Where a Party's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that Party's specific commitments, the Party shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.

3. If a Party has a reason to believe that a monopoly supplier of a service of any other Party is acting in a manner

inconsistent with Paragraph 1 or 2, it may request the 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 territory.

### **Article 19 Business Practices**

1. The Parties recognise that certain business practices of service suppliers, other than those falling under Article 18 (Monopolies and Exclusive Service Suppliers), may restrain competition and thereby restrict trade in services.

2. Each Party shall, at the request of any other Party, enter into consultations with a view to eliminating practices referred to in Paragraph 1. 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 available to the requesting Party. The requested Party may also provide other information available to the requesting Party, subject to its laws and to the conclusion of a satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Party.

### **Article 20 Recognition**

1. For the purpose 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 certifications granted in a particular country. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.

2. A Party that is a party to an agreement or arrangement of the type referred to in Paragraph 1, whether existing or future, shall afford adequate opportunity for the other Parties, upon request, to negotiate their accession to such an agreement or arrangement, or to negotiate comparable ones with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for any other Party to demonstrate that education, experience, licences, or certifications obtained or requirements met in that other Party's territory should be recognised.

3. Nothing in Article 9 (Most-Favoured-Nation Treatment) shall be construed to require any Party to accord such recognition to the education or experience obtained, requirements met, or licences or certifications granted in another Party.

4. A Party shall not accord recognition in a manner which would constitute a means of discrimination between other Parties 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. Where appropriate, recognition should be based on multilaterally agreed criteria. In appropriate cases, Parties shall work in co-operation with relevant inter-governmental and non-governmental organisations towards the establishment and adoption of common international standards and criteria for recognition and common international standards for the practice of relevant services trades and professions.

6. As set out in Annex 8C (Professional Services), each Party shall endeavour to facilitate trade in professional services, including through encouraging relevant bodies in its territory to enter into negotiations for agreements or arrangements on recognition.

## **Article 21**

### **Payments and Transfers**

1. Except under the circumstances envisaged in Article 4 (Measures to Safeguard the Balance of Payments) of Chapter 18 (General Provisions and Exceptions), a Party shall not apply restrictions on international transfers or payments for current transactions relating to its commitments.

2. Nothing in this Chapter shall affect the rights and obligations of a Party as a member of the IMF under the IMF Articles of Agreement, as may be amended, including the use of exchange actions which are in conformity with the IMF Articles of Agreement as may be amended, provided that the Party shall not impose restrictions on any capital transactions inconsistently with its commitments under this Chapter regarding such transactions, except under Article 4 (Measures to Safeguard the Balance of Payments) of Chapter 18 (General Provisions and Exceptions) or on request of the IMF.

## **Article 22**

### **Subsidies**

1. Notwithstanding Article 2.3(b) (Scope), the Parties shall review the issue of disciplines on subsidies related to trade in services in light of any disciplines agreed under Article XV of GATS with a view to their incorporation into this Chapter.

2. A Party which considers that it is adversely affected by a subsidy of another Party related to trade in services may request consultations with that other Party on such matters. The requested Party shall accord sympathetic consideration to such a request.

3. No Party shall have recourse to dispute settlement under Chapter 20 (Consultations and Dispute Settlement) for any request made or consultations held under this Article, or any other dispute arising under this Article.

### **Article 23** **Safeguard Measures**

1. The Parties note the multilateral negotiations pursuant to Article X of GATS on the question of emergency safeguard measures based on the principle of non-discrimination. 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 incorporate the results of such multilateral negotiations.

2. In the event that the implementation of the commitments made in this Agreement causes a substantial adverse impact to a service sector of a Party before the conclusion of the multilateral negotiations referred to in Paragraph 1, the affected Party may request consultations with the other Party or Parties. The requested Party or Parties shall enter into consultations with the requesting Party on the commitments that the requested Party or Parties consider may have caused the substantial adverse impact and on the possibility of the requesting Party adopting any measure to alleviate such impact. The requesting Party shall notify all the other Parties of its request for consultations under this Paragraph.

3. Any measures taken pursuant to Paragraph 2 shall be mutually agreed by the Parties concerned.

4. The consulting Parties shall notify the results of the consultations to all other Parties as soon as practicable and by no later than the next meeting of the Committee on Trade in Services (the "Services Committee") established pursuant to Article 28 (Committee on Trade in Services) following the conclusion of consultations.

**Article 24**  
**Increasing Participation for Newer ASEAN Member States**

In order to increase the benefits of this Chapter for the newer ASEAN Member States, and in accordance with the objectives of and the Preamble to this Agreement and the objectives of Chapter 12 (Economic Co-operation), the Parties recognise the importance of according special and differential treatment to the newer ASEAN Member States and facilitating their participation in this Chapter through negotiated specific commitments relating to:

- (a) strengthened domestic services capacity and its efficiency and competitiveness, inter alia, through access to technology on a commercial basis;
- (b) improved access to distribution channels and information networks;
- (c) commitments in sectors of export interest to newer ASEAN Member States; and
- (d) recognising that commitments by each newer ASEAN Member State may be made in accordance with its individual stage of development.

**Article 25**  
**Denial of Benefits**

1. A Party may deny the benefits of this Chapter:
  - (a) to the supply of any 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 another 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 and regulations of a non-Party; and
  - (ii) by a person of a non-Party which operates or uses the vessel in whole or in part.

2. A Party may deny the benefit 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 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.

## **Article 26**

### **Treatment and Protection of Commercial Presence**

1. Chapter 11 (Investment) shall not apply to measures adopted or maintained by a Party to the extent that they are covered by this Chapter.

2. Notwithstanding Paragraph 1, Article 5 (Senior Management and Board of Directors),<sup>15</sup> Article 7 (Treatment of Investment), Article 8 (Compensation for Losses), Article 9 (Transfers), Article 10 (Expropriation and Compensation), Article 11 (Subrogation), and Section B (Investment Disputes between a Party and an Investor) of Chapter 11 (Investment),

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<sup>15</sup> Article 5 (Senior Management and Board of Directors) of Chapter 11 (Investment) shall apply to measures affecting the supply of a service only for a Party making commitments in accordance with Article 12 (Schedules of Non-Conforming Measures).

shall apply, *mutatis mutandis*, to any measure affecting the supply of a service by a service supplier of a Party through commercial presence in the territory of any other Party, but only to the extent that any such measure relates to a covered investment within the meaning of Chapter 11 (Investment), and an obligation under Chapter 11 (Investment).

## **Article 27**

### **Co-operation**

1. The Parties shall strengthen co-operation efforts in sectors, including sectors which are not covered by current co-operation arrangements. The Parties shall discuss and agree on the sectors for co-operation and develop co-operation programmes in these sectors in order to improve their domestic services capacity and their efficiency and competitiveness.

2. The Parties shall strengthen co-operation on the treatment and protection of commercial presence, including initiating discussions to better understand the implications of cross-applying prohibition of performance requirements in Chapter 11 (Investment) to this Chapter. The Parties shall explore the possibility of capacity building initiatives in this area where relevant.

3. The Parties shall strengthen co-operation on domestic regulations pertaining to trade in services by initiating discussions with a view to enhance the ease of doing business in the region. The Parties shall consider relevant developments at other multilateral platforms, such as the World Trade Organisation's Joint Initiative on Services Domestic Regulation, including provisions in the areas of submission of applications and independence.

4. The Parties shall strengthen co-operation in education services, as set out in Annex 8D (Education Services Co-operation).

**Article 28**  
**Committee on Trade in Services**

1. The Parties hereby establish a Services Committee, consisting of representatives of the Parties.
2. The Services Committee's functions shall be:
  - (a) to conduct reviews of commitments in accordance with Article 7 (Review of Commitments);
  - (b) if the multilateral negotiations referred to in Article 23 (Safeguard Measures) have not concluded within three years from entry into force of this Agreement, to enter into discussion on the question of emergency safeguard measures based on the principle of non-discrimination for the purpose of considering appropriate amendments to this Chapter;
  - (c) to enter into discussions on the application of most-favoured-nation treatment to trade in services for the purpose of considering appropriate amendments to this Chapter, in conjunction with the first review of commitments under Article 7 (Review of Commitments);
  - (d) to review the implementation of this Chapter;
  - (e) to consider any other matters identified by the Parties; and
  - (f) to report to the FTA Joint Committee as required.
3. The Services Committee shall conclude the discussions referred to in Paragraph 2(a) to (c) within five years of entry into force of this Agreement, unless the Parties agree otherwise.

4. The Services Committee shall meet as mutually determined by the Parties as required under this Article and Article 7 (Review of Commitments). Meetings may be conducted in person, or by any other means as mutually determined by the Parties.