

## **CHAPTER EIGHT** **TRADE IN SERVICES**

### **Article 8.1: Definitions**

For purposes of this Chapter:

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repair and maintenance services** means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance;

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

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

**computer reservation system (CRS) services** means services provided by computerized systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;

**juridical person** means any legal entity duly constituted or otherwise organized under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;

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

- (a) constituted or otherwise organized under the law of the other Party, and is engaged in substantive business operations in the territory of the other Party; or
- (b) in the case of the supply of a service through commercial presence, owned or controlled by:
  - (i) a natural person of the other Party; or
  - (ii) a juridical person of the other Party identified under subparagraph (a);

A juridical person is:

- (a) **owned** by persons of a Party if more than 50 percent of the equity interest in it is beneficially owned by persons of that Party;
- (b) **controlled** by persons of a Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions; or
- (c) **affiliated** with another person when it controls, or is controlled by, that other person, or when it and the other person are both controlled by the same person;

**measures adopted or maintained by a Party** means measures adopted or maintained by:

- (a) central or local governments and authorities; or
- (b) any other bodies in the exercise of powers delegated by central or local governments or authorities;

**measures adopted or maintained by a Party affecting trade in services** include measures in respect of:

- (a) the purchase, payment or use of a service;
- (b) the access to and use of, in connection with the supply of a service, services which are required by that Party to be offered to the public generally; or
- (c) the presence, including commercial presence, in its territory of persons of the other Party for the supply of a service;

**monopoly supplier of a service** means any person, public or private, which in the relevant market of the territory of a Party is authorized or established formally or in effect by that Party as the sole supplier of that service;

**natural person of a Party** means a national of Korea or a national of Georgia under its domestic law;

**sector** of a service means,

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

**selling and marketing of air transport services** mean 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;

**service consumer** means any person that receives or uses a service;

**service of the other Party** means a service which is supplied:

- (a) from or in the territory of the other Party, or in the case of maritime transport, by a vessel registered under the laws of the other Party, or by a person of the other Party which supplies the service through the operation of a vessel or its use in whole or in part; or
- (b) in the case of the supply of a service through commercial presence or through the presence of natural persons, by the service supplier of the other Party;

**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;

**service supplier** means any person that supplies a service<sup>1</sup>;

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

**trade in services** means the supply of a service:

- (a) from the territory of a Party into the territory of the other Party;
- (b) in the territory of a Party to the service consumer of the other Party;
- (c) by a service supplier of a Party, through commercial presence in the territory of the other Party; or
- (d) by a service supplier of a Party, through presence of natural persons of that Party in the territory of the other Party; and

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<sup>1</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 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.

**traffic rights** means the right for scheduled and non-scheduled services to operate or to carry passengers, cargo and mail for remuneration or hire from, to, within, or over the territory of a Party, including points to be served, routes to be operated, types of traffic to be carried, capacity to be provided, tariffs to be charged and their conditions, and criteria for designation of airlines, including such criteria as number, ownership, and control.

### **Article 8.2: Scope**

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) subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance;
  - (c) cabotage in maritime transport services;
  - (d) measures affecting air traffic rights, however granted or 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; and
    - (iii) computer reservation system ("CRS") services; and
  - (e) services supplied in the exercise of governmental authority within the territory of each respective Party.
3. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.

### **Article 8.3: National Treatment**

1. In the sectors inscribed in its Schedule of Specific Commitments, and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of the other Party, in respect of all measures affecting the supply of services, treatment no less favorable than that it accords to its own like services and

service suppliers.<sup>2</sup>

2. A Party may meet the requirement in 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 favorable if it modifies the conditions of competition in favor of services or service suppliers of the Party compared to like service or service suppliers of the other Party.

#### **Article 8.4: Most-Favored Nation Treatment**

If, after the date of entry into force of this Agreement, a Party enters into an agreement notified under Article V or Article V bis of GATS, it shall upon request from the other Party afford adequate opportunity to that Party to negotiate the benefits granted therein.

#### **Article 8.5: Market Access**

1. With respect to market access through the modes of supply identified in Article 8.1, each Party shall accord services and service suppliers of the other Party treatment no less favorable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule of Specific Commitments <sup>3</sup>.

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

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

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<sup>2</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>3</sup> If a Party undertakes a market access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (a) of the definition of **trade in services** in Article 8.1 and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (c) of the definition of **trade in services** in Article 8.1, it is thereby committed to allow related transfers of capital into its territory.

of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;<sup>4</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 8.6: Additional Commitments**

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Article 8.3 or Article 8.5, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Party's Schedule of Specific Commitments.

#### **Article 8.7: Schedules of Specific Commitments**

1. Each Party shall set out in its schedule the specific commitments it undertakes under Articles 8.3, 8.5, and 8.6. 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; and
- (d) where appropriate, the time frame for implementation of such commitments.

2. Measures inconsistent with Articles 8.3 and 8.5 shall be inscribed in the column relating to Article 8.5. In this case, the inscription will be considered to provide a condition or qualification to Article 8.3 as well.

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<sup>4</sup> Subparagraph 2(c) does not cover measures of a Party which limit inputs for the supply of services.

3. Schedules of Specific Commitments shall be annexed to this Chapter and shall form an integral part of this Agreement.

### **Article 8.8: Domestic Regulation**

The disciplines in the Reference Paper on Services Domestic Regulation (INF/SDR/2), shall, *mutatis mutandis*, be incorporated into and made part of this Chapter.<sup>5</sup>

### **Article 8.9: Transparency**

Further to Chapter Fifteen (Transparency):

- (a) Each Party shall establish or maintain appropriate mechanisms for responding, to the extent practicable, to inquiries from interested persons regarding its regulations relating to the subject matter of this Chapter.
- (b) If a Party does not provide advance notice of and opportunity for comment on regulations it proposes to adopt relating to the subject matter of this Chapter, it shall, to the extent possible, address in writing the reasons for not doing so.
- (c) To the extent possible, each Party shall allow reasonable time between publication of final regulations relating to the subject matter of this Chapter and their effective date.

### **Article 8.10: Recognition**

1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorization, licensing, or certification of services suppliers, a Party may recognize the education or experience obtained, requirements met, or licenses or certifications granted in a particular country. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.

2. Where a Party recognizes, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licenses or certifications granted in the territory of a non-Party, the Party is not obliged to accord such recognition to the education or experience obtained, requirements met, or licenses or certifications granted in the territory of the other Party.

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<sup>5</sup> For purposes of this Article, the disciplines in the Reference Paper on Services Domestic Regulation shall not apply to a sector or measure to the extent that such sector or measure is not subject to the obligations under Article 8.3 or Article 8.5 by reason of a Party's commitments made in accordance with Article 8.7

3. 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 Party, upon request, to negotiate its 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 the other Party to demonstrate that the education, experience, licenses, or certifications obtained or requirements met in that other Party's territory should be recognized.

### **Article 8.11: Payments and Transfers**

1. Except under the circumstances envisaged in Article 8.12, a Party shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments.

2. Nothing in this Chapter shall affect the rights and obligations of the Parties as members of the International Monetary Fund under *the Articles of Agreement of the International Monetary Fund* (hereinafter referred to as the "Articles of Agreement"), including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except under Article 8.12 or at the request of the International Monetary Fund.

### **Article 8.12: Restrictions to Safeguard the Balance-of-Payments**

1. In the event of serious balance-of-payments and external financial difficulties or threat thereof, a Party may adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments.

2. The restrictions referred to in paragraph 1:

- (a) shall not discriminate between the other Party and non-Party;
- (b) shall be consistent with the Articles of Agreement;
- (c) shall avoid unnecessary damage to the commercial, economic and financial interests of the other Party;
- (d) shall not exceed those necessary to deal with the circumstances described in paragraph 1; and
- (e) shall be temporary and be phased out progressively as the situation specified in paragraph 1 improves.

3. In determining the incidence of such restrictions, a Party may give priority to the supply of services which are more essential to its economic or development programs. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular service sector.

4. A Party adopting or maintaining any restriction under paragraph 1 shall promptly notify to the Sub-Committee on Trade in Services. Upon request of the other Party, a Party adopting or maintaining any restriction under paragraph 1 shall commence consultation with the other Party in relation to the restrictions adopted by it, if such consultations are not taking place at the WTO.

### **Article 8.13: Denial of Benefits**

1. A Party may deny the benefits of this Chapter to a service supplier of the other 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.

2. A Party may deny the benefits of this Chapter in the case of the supply of a maritime transport service, if it establishes that the service is supplied:

- (a) by a vessel registered under the laws of a non-Party, and
- (b) by a person which operates or uses the vessel in whole or in part but which is of a non-Party.

3. A Party may deny the benefits of this Chapter to a service supplier of the other Party if the service supplier is a juridical person:

- (a) owned or controlled by persons of a non-Party or of the denying Party; and
- (b) has no substantial business activities in the territory of the other Party.

### **Article 8.14: 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 and 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 specific commitments, the Party shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.

3. If a Party has reason to believe that a monopoly supplier of a service of the other Party is acting in a manner inconsistent with paragraph 1 or 2, that Party may request the other Party establishing, maintaining or authorizing 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) authorizes or establishes a small number of service suppliers and (b) substantially prevents competition among those suppliers in its territory.

#### **Article 8.15: Business Practices**

1. The Parties recognize that certain business practices of service suppliers, other than those falling under Article 8.14, may restrain competition and thereby restrict trade in services.

2. Each Party shall, on the request of the other Party (referred to in this Article as the "Requesting Party"), enter into consultations with a view to eliminating practices referred to in paragraph 1. The Party addressed (referred to in this Article as the "Requested Party"), shall accord full and sympathetic consideration to such a request and shall cooperate through the supply of publicly available non-confidential information of relevance to the matter in question. The Requested Party shall also provide other information available to the Requesting Party, subject to its domestic law and to the conclusion of satisfactory agreement concerning the safeguarding of its confidentiality by the Requesting Party.

#### **Article 8.16: Sub-Committee on Trade in Services**

1. The Parties hereby establish a Sub-Committee on Trade in Services (hereinafter referred to as the "Sub-Committee"), comprising representatives of each Party.

2. The Sub-Committee's functions shall include:

- (a) reviewing the implementation and operation of this Chapter;
- (b) identifying and recommending measures to promote trade in services; and
- (c) at a Party's request, consulting on any matter arising under this Chapter.

3. Unless the Parties agree otherwise, the Sub-Committee shall meet within one year after the date of entry into force of this Agreement and thereafter meet regularly, or

as otherwise agreed. The Sub-Committee shall inform the Joint Committee of the results of each meeting.