

CHAPTER 8 TRADE IN SERVICES

Article 8.1: Definitions

For the purposes of this Chapter:

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;

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repair and maintenance services means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance;

airport operation and management services means the supply of air terminal, airfield and other airport infrastructure operation services on a fee or contract basis. Airport operation services do not include air navigation services;

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 representative office,

within the territory of a Party for the purpose of supplying a service;

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;

ground handling services means the supply at an airport, on a fee or contract basis, of the following: airline representation, administration and supervision; passenger handling; baggage handling; ramp services; catering (except the preparation of the food); air cargo and mail handling; fuelling of an aircraft; aircraft servicing and cleaning; surface transport; and flight operations, crew administration and flight planning. Ground handling services do not include self-handling; security; line maintenance; aircraft repair and maintenance; or management or operation of essential centralised airport infrastructure such as de-icing facilities, fuel distribution systems, baggage handling systems, and fixed intra-airport transport systems;

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

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

- (i) constituted or otherwise organised under the law of that other Party, and is engaged in substantive business operations in the territory of:
 - (A) that Party; or
 - (B) any Member of the WTO and is owned or controlled by natural persons of that other Party or by juridical persons that meet all the conditions of subparagraph (i)(A); or
- (ii) in the case of the supply of a service through commercial presence, owned or controlled by:
 - (A) natural persons of that Party; or
 - (B) juridical persons of that other Party identified under subparagraph (i).

a juridical person is:

- (i) “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;
- (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; or
- (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;

measure means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;

measures by Parties means measures taken by:

- (i) central, regional or local governments and authorities; and
- (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;

In fulfilling its obligations and commitments under this Chapter, each Party shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities and non-governmental bodies within its territory;

measures by Parties affecting trade in services include measures in respect of

- (i) the purchase, payment or use of a service;
- (ii) the access to and use of, in connection with the supply of a service, services which are required by a Party 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;

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;

natural person of the other Party means a national or a permanent resident¹ of the UAE or Viet Nam;

person means either a natural person or a juridical person;

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; or
- (ii) otherwise, the whole of that service sector, including all of its subsectors;

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.

services include any service in any sector except services supplied in the exercise of governmental authority;

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

service of the other 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 of that other Party, or by a person of that other Party which supplies the service through the operation of a vessel and/or its use in whole or in part; or
- (ii) in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of that other Party;

¹ With respect to the UAE, the term "permanent resident" shall mean any natural person who is in possession of a valid residency permit under the laws and regulations of the UAE.

service supplier means any person that seeks to supply or supplies a service;²

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

trade in services is defined as the supply of a service:

- (i) from the territory of a Party into the territory of the other Party;
- (ii) in the territory of a Party to the service consumer of the other Party;
- (iii) by a service supplier of a Party, through commercial presence in the territory of the other Party;
- (iv) by a service supplier of a Party, through presence of natural persons of a Party in the territory of the other Party;

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

Article 8.2: Scope

1. This Chapter applies to measures by Parties affecting trade in services.
2. This Chapter shall not apply to:
 - (a) laws, regulations, or requirements governing the procurement by government 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;
 - (b) services supplied in the exercise of governmental authority;
 - (c) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance; and

² 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 the 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.

- (d) measures affecting natural persons of a Party seeking access to the employment market of the other Party, or measures regarding citizenship, residence or employment on a permanent basis.

Nothing in this Chapter shall prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Party under the terms of a specific commitment.³

- (e) measures affecting air traffic rights 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;
 - (iii) computer reservation system services;
 - (iv) airport operation and management services; or
 - (v) ground-handling services.

Article 8.3: Schedules of Specific Commitments

1. Each Party shall set out in its Schedule of Specific Commitments, the specific commitments it undertakes in accordance with Articles 8.5 (Market Access), 8.6 (National Treatment), and 8.7 (Additional Commitments).
2. With respect to sectors where such commitments are undertaken, each Schedule of Specific Commitments shall specify:
 - (a) terms, limitations and conditions on market access;
 - (b) conditions and qualifications on national treatment;
 - (c) undertakings relating to additional commitments;
 - (d) where appropriate, the time-frame for implementation of such commitments; and
 - (e) the date of entry into force of such commitments.
3. Measures inconsistent with both Articles 8.5 (Market Access) and 8.6 (National Treatment) shall be inscribed in the column relating to Article 8.5 (Market Access).

³ The sole fact of requiring a visa for natural persons of certain country and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.

In this case, the inscription will be considered to provide a condition or qualification to Article 8.6 (National Treatment) as well.

4. The Parties' Schedules of Specific Commitments are set forth in Annex 8A (Schedules of Specific Commitments).

Article 8.4: Most-Favoured-Nation Treatment

1. Except as provided for in its List of MFN Exemptions contained in Annex 8B (List of MFN Exemptions), a Party shall accord immediately and unconditionally, in respect of all measures affecting the supply of services, to services and service suppliers of the other Party treatment no less favourable than that it accords to like services and service suppliers of any non-party.
2. The obligations of paragraph 1 shall not apply to:
 - (a) Treatment granted under other existing or future agreements concluded by one of the Parties and notified under Article V or V bis of the GATS as well as treatment granted in accordance with Article VII of the GATS or prudential measures in accordance with the GATS Annex on Financial Services.
 - (b) Treatment granted by the UAE to services and service suppliers of the Gulf Cooperation Council ("GCC") Member States under the GCC Economic Agreement and treatment granted by the UAE under the Greater Arab Free Trade Area (GAFTA).
 - (c) Treatment granted by Viet Nam to services and service suppliers of the Association of Southeast Asian Nations (ASEAN) Member States under any ASEAN agreement open to participation by any ASEAN Member State, in force or signed after the date of entry into force of this Agreement.
3. The rights and obligations of the Parties in respect of advantages accorded to adjacent countries shall be governed by paragraph 3 of Article II of the GATS, which is hereby incorporated into and made part of this Agreement.
4. If, after the entry into force of this Agreement, a Party enters into any agreement on trade in services with a non-party, it shall consider negotiating, upon request by the other Party, the incorporation into this Agreement of a treatment no less favourable than that provided under the agreement with the non-party. The Parties shall take into consideration the circumstances under which a Party enters into any agreement on trade in services with a non-party.

Article 8.5: Market Access

1. With respect to market access through the modes of supply identified in the definition of "trade in services" contained in Article 8.1 (Definitions), each Party shall accord services and service suppliers of the other Party treatment no less

favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule of Specific Commitments.⁴

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 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;⁵
 - (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: National Treatment

1. With respect to the services 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

⁴ If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in the definition of “trade in services” subparagraph (w)(i) contained in Article 8.1(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 the definition of “trade in services” paragraph (w)(iii) contained in Article 8.1 (Definitions), it is thereby committed to allow related transfers of capital into its territory.

⁵ Subparagraph 2(c) does not cover measures of a Party which limit inputs for the supply of services.

all measures affecting the supply of services, treatment no less favourable than that it accords, to its own like services and service suppliers.⁶

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 by a Party shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of that Party compared to the like service or service suppliers of the other Party.

Article 8.7: Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 8.5 (Market Access) and 8.6 (National Treatment), including those regarding qualification, standards or licensing matters. Such commitments shall be inscribed in a Party's Schedule of Specific Commitments.

Article 8.8: Modification of Schedules

1.
 - (a) A Party (referred to in this Article as the "modifying Party") may modify or withdraw any commitment in its Schedule, at any time after three years have elapsed from the date on which that commitment entered into force, in accordance with the provisions of this Article.
 - (b) A modifying Party shall notify its intent to modify or withdraw a commitment pursuant to this Article to the Joint Committee no later than three months before the intended date of implementation of the modification or withdrawal.
2. At the request of a Party the benefits of which under this Chapter may be affected (referred to in this Article as an "affected Party") by a proposed modification or withdrawal notified under subparagraph 1(b), the modifying Party shall enter into negotiations with a view to reaching agreement on any necessary compensatory adjustment. In such negotiations and agreement, the Parties shall endeavour to maintain a general level of mutually advantageous commitments not less favourable to trade than that provided for in Schedules of Specific Commitments prior to such negotiations.
3. If agreement is not reached between the modifying Party and the affected Party before the end of the period provided for negotiations, the affected Party may refer the matter to the Joint Committee.

⁶ Specific commitments assumed under this Article shall not be construed to require either Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

4. The Joint Committee shall establish procedures for rectification or modification of Schedules. A Party which has modified or withdrawn scheduled commitments under this Article shall modify its Schedule according to such procedures.

Article 8.9: Domestic Regulation

1. In sectors where specific commitments are undertaken, each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.
2.
 - (a) 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.
 - (b) The provisions of subparagraph (a) shall not be construed to require a Party to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.
3. Where authorisation is required for the supply of a service on which a specific commitment under this Chapter has been made, the competent authorities of each Party shall:
 - (a) within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application;
 - (b) in the case of an incomplete application, on 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;
 - (c) on 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 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 do not constitute unnecessary barriers to trade in services, in sectors where specific commitments are undertaken, the Parties shall aim to ensure that such requirements 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.
5. In determining whether a Party is in conformity with the obligation under paragraph 4, account shall be taken of international standards of relevant international organisations applied by that Party.⁷
 6. In sectors where specific commitments regarding professional services are undertaken, each Party shall provide for adequate procedures to verify the competence of professionals of the other Party.
 7. The Parties shall jointly review the results of the negotiations on disciplines on domestic regulation, pursuant to Article VI:4 of the GATS, with a view of incorporating them into this Chapter.

Article 8.10: 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 paragraph 3, a Party may recognise, or encourage its relevant competent bodies to recognise, the education or experience obtained, requirements met, or licences or certifications granted in the other Party. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement between the Parties or their relevant competent bodies, or may be accorded autonomously.
2. Where a Party recognises, by agreement or arrangement, the education or experience obtained, requirements met, or licenses or certifications granted in the territory of a non-party, that Party shall afford the other Party adequate opportunity to negotiate its accession to such an agreement or arrangement, whether existing or future, or to negotiate a comparable agreement or arrangement with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that the education, experience, licences or certifications obtained or requirements met in that other Party's territory should also be recognised.
3. A Party shall not accord recognition in a manner which would constitute a means of discrimination between the other Party and non-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.

⁷ The term “relevant international organisations” refers to international bodies whose membership is open to the relevant bodies of the Parties to this Agreement.

Article 8.11: Payments and Transfers

1. Except under the circumstances envisaged in Article 8.14 (Restrictions to Safeguard the Balance-of-Payments), a Party shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments.
2. Nothing in this Chapter shall affect the rights and obligations of the Parties as members of the International Monetary Fund under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except under Article 8.14 (Restrictions to Safeguard the Balance-of-Payments) or at the request of the International Monetary Fund.

Article 8.12: Monopolies and Exclusive Service Suppliers

The rights and obligations of the Parties in respect of monopolies and exclusive service suppliers shall be governed by paragraphs 1, 2, and 5, of Article VIII of the GATS, which are hereby incorporated into and made part of this Agreement.

Article 8.13: Business Practices

The rights and obligations of the Parties in respect of business practices shall be governed by Article IX of the GATS, which is hereby incorporated into and made part of this Agreement.

Article 8.14: Restrictions to Safeguard the Balance-of-Payments

1. The Parties shall endeavour to avoid the imposition of restrictions to safeguard the balance of payments.
2. The rights and obligations of the Parties in respect of such restrictions shall be governed by paragraphs 1 to 3 of Article XII of the GATS, which are hereby incorporated into and made part of this Agreement. A Party adopting or maintaining such restrictions, or changing existing restrictions, shall promptly notify the Joint Committee thereof.

Article 8.15: Denial of Benefits

A Party may deny the benefits of this Agreement to a service supplier that is a juridical person, if persons of a non-party own or control that juridical person and the denying Party:

- (a) does not maintain diplomatic relations with the non-party; or
- (b) adopts or maintains measures with respect to the non-party or a person of the non-party that prohibit transactions with the juridical person or

that would be violated or circumvented if the benefits of this Agreement were accorded to the juridical person.

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 and/or uses the vessel in whole or in part but which is of a non-party.

Article 8.16: Review

1. With the objective of further liberalising trade in services between them, the Parties agree to jointly review their Schedules of Specific Commitments and their Lists of MFN Exemptions, taking into account any services liberalisation developments as a result of on-going work under the auspices of the WTO.
2. The first such review shall take place no later than three years after the entry into force of this Agreement.

Article 8.17: Annexes

The following Annexes form an integral part of this Chapter:

- Annex 8A (Schedules of Specific Commitments)
- Annex 8B (List of MFN Exemptions)
- Annex 8C (Movement of Natural Persons)
- Annex 8D (Telecommunications)