

CHAPTER 6 TRADE IN SERVICES

Article 6.1: 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repair and maintenance services means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance;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 of the other Party means a juridical person which is either:

- (a) constituted or otherwise organized under the laws and regulations 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) natural persons of the other Party; or
 - (ii) juridical persons of the other Party identified under subparagraph (a);

a juridical person is:

- (a) 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;

- (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;
- (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;

measure means any measure as defined in Article 1.1 (General Definitions) by a party affecting trade in services including 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 a Party to be offered to the public generally; and
- (c) the presence, including commercial presence, in its territory of a service supplier 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 authorized or established formally or in effect by that Party as the sole supplier of that service;

natural person of the other Party means a natural person who resides in the territory of the other Party or elsewhere and who under the law of the other Party is a national of the other Party;

person means either a natural person or a juridical person;

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;
- (b) 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 includes any service in any sector except services supplied in the exercise of governmental authority;

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 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 and/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 a service supplier of the other Party;

service supplier means any person that supplies a service;¹

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:

- (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; and
- (d) by a service supplier of a Party, through presence of natural persons of a Party in the territory of the other Party; and

¹ 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 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 6.2: Scope

1. This Chapter applies to measures by a Party affecting trade in services.
2. For purposes of this Chapter, measures by a Party means measures taken by:
 - (a) central, regional, or local governments and authorities; and
 - (b) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities.
3. This Chapter shall not apply to:
 - (a) a service supplied in the exercise of governmental authority within the territory of each respective Party;
 - (b) measures affecting air traffic rights, however granted; or to measures affecting services directly related to the exercise of air traffic rights, other than measures affecting:
 - (i) aircraft repair and maintenance services;
 - (ii) the selling and marketing of air transport services; and
 - (iii) computer reservation system services;
 - (c) cabotage in maritime transport services;
 - (d) subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance;
 - (e) government procurement; and
 - (f) measures affecting natural persons seeking access to the employment market of a Party and measures regarding

citizenship, residence or employment on a permanent basis.

4. Nothing in this Chapter shall prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits² accruing to the other Party under the terms of a specific commitment.

Article 6.3: National Treatment

1. In the sectors inscribed in its Schedule, 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, in like circumstances, to its own services and service suppliers³.

2. The treatment to be accorded by a Party under paragraph 1 means, with respect to a regional level of government, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that regional level of government to services and service suppliers of the Party of which it forms a part.

3. A Party may meet the requirement of paragraph 1 by according to services and service suppliers of the other Party, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.

4. 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 services or service suppliers of the other Party.

Article 6.4: Most-Favored-Nation Commitments

1. The Parties shall, in respect of the services sectors and subsectors listed in their Schedules to Annex 6-D and 6-E that are identified with an

² The sole fact of requiring a visa for natural persons of certain countries and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.

³ 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.

'MFN', and subject to any conditions and qualifications set out therein, accord to services and service suppliers of the other Party treatment no less favorable than that it accords to like services and service suppliers of a non-Party.

2. Notwithstanding paragraph 1, each Party reserves the right to adopt or maintain any measure that accords differential treatment to services and service suppliers of a non-Party under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.

3. Notwithstanding paragraph 1, Indonesia reserves the right to adopt or maintain any measure that accords differential treatment to services and service suppliers of any other ASEAN Member State Party taken under an agreement on the liberalization of trade in goods or services or investment as part of a wider process of economic integration between or among ASEAN Member States.

4. 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 exchange limited to contiguous frontier zones of services that are both locally produced and consumed.

Article 6.5: Market Access

1. With respect to market access through the modes of supply identified in Article 6.1, a 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.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, 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;

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 Article 6.1 **trade in services** (a) and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in Article 6.1 **trade in services** (c), it is thereby committed to allow related transfers of capital into its territory.

- (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 6.6: Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Article 6.3 or Article 6.5, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Party's Schedule.

Article 6.7: Schedules of Specific Commitments

1. Each Party shall set out in its Schedule the specific commitments it undertakes under Article 6.3, Article 6.5, and Article 6.6. With respect to sectors where such commitments are undertaken, each Schedule shall specify:

- (a) terms, limitations and conditions on market access;
- (b) conditions and qualifications on national treatment;

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

- (c) undertakings relating to additional commitments;
- (d) where appropriate the time-frame for implementation of such commitment; and
- (e) the date of entry into force of such commitment.

2. Measures inconsistent with Article 6.3 shall be inscribed in the column relating to Article 6.3, and measures inconsistent with Article 6.5 shall be inscribed in the column relating to Article 6.5.

3. In addition to commitments referred to in paragraph 1, each Party shall also make commitments under Article 6.4.

4. The Schedules shall be annexed to this Chapter and shall form an integral part thereof.

5. Neither Party may adopt new, or more, discriminatory measures with regard to services and service supplier of the other Party in comparison with treatment accorded pursuant to the specific commitments undertaken in conformity with paragraph 1.

6. Each Party shall identify in its schedule sectors or sub-sectors for future liberalization with an 'FL'. In these sectors and subsectors, any applicable terms, conditions, limitations, qualifications and undertakings referred to in paragraph 1 shall be limited to measures that the Party maintains on the date of entry into force of this Agreement.

7. If a Party amends a measure referred to in paragraph 6 in a manner that reduces or eliminates the inconsistency of that measure with Article 6.3 or 6.5, as it existed immediately before the amendment, that Party shall not subsequently amend that measure in a way that increases the measure's inconsistency with Article 6.3 or 6.5.

Article 6.8: Modification of Schedules

1. Notwithstanding article 6.7, if a Party requests a consultation to discuss the possibility of modifying or withdrawing a commitment, and to reach any necessary compensatory adjustment, the other Party shall enter into consultation with the requesting Party. The requesting Party may not modify or withdraw its commitment until the Parties reach an agreement on the compensatory adjustment.

2. In achieving a compensatory adjustment, the Parties shall ensure that the general level of mutually advantageous commitment is not less favorable to trade than provided for in the Schedules prior to such negotiations.

3. If the Parties concerned are unable to reach an agreement on the compensatory adjustment, the matter shall be resolved by arbitration in accordance with Chapter Ten (Dispute Settlement) of this Agreement. The modifying Party may not modify or withdraw its commitment until it has made compensatory adjustments in conformity with the findings of the arbitration.

4. If the modifying Party implements its proposed modification or withdrawal and does not comply with the findings of the arbitration, the other Party that participated in the arbitration may modify or withdraw substantially equivalent benefits in conformity with those findings. Such a modification or withdrawal may be implemented solely with respect to the modifying Party.

Article 6.9: Transparency

1. The Parties recognize 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.

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 and, to the extent provided for under its domestic legal framework, in the English language.

4. Where publication referred to in paragraphs 2 and 3 is not practicable, such information⁶ shall be made otherwise publicly available.

5. Each Party shall respond promptly to all requests by the other Party

⁶ For greater certainty, the Parties agree that such information may be published in each Party's chosen language.

for specific information on any of its measures of general application or international agreements within the meaning of paragraph 2. Each Party shall also establish one or more enquiry points to provide specific information to the other Party, upon request, on all such matters as well as those subject to the notification requirement in paragraph 6. Such enquiry points shall be established within two years from the date of entry into force of this Agreement.

6. Each Party shall promptly and at least annually inform the Joint Committee of the introduction of any new, or any changes to existing, laws, regulations or administrative guidelines which significantly affect trade in services covered by its specific commitments under this Chapter.

7. Each Party may notify to the Joint Committee any measure, taken by the other Party, which it considers affects the operation of this Chapter.

Article 6.10: 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, at the request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.

(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 a Party requires authorization for the supply of a service on which a specific commitments has been made, it shall ensure that its competent authorities:

(a) ensure that any authorization fees charged for the completion of relevant application procedures are reasonable, transparent and do not in themselves restrict the supply of a service. For purposes of this sub-paragraph, authorization fees do not

include fees for the use of natural resources, payment for auctions, tendering, or other non-discriminatory means of awarding concessions, or mandated contribution to universal services provision;

- (b) 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;
- (c) to the extent practicable establish an indicative timeframe for processing of an application;
- (d) at the request of the applicant, provide, without undue delay, information concerning the status of the application;
- (e) in the case of an incomplete application, at the request of the applicant, where practicable, identify all the additional information that is required to complete the application and provide the opportunity to remedy deficiencies within a reasonable timeframe;
- (f) if an application is terminated or denied, to the extent possible, inform the applicant in writing, and without undue delay, 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 domestic laws and regulations, do not require physical presence in the territory of a Party for the submission of an application for a license or qualification;
- (h) endeavor to accept applications in electronic format under the equivalent conditions of authenticity as paper submissions in accordance with domestic laws and regulations; and
- (i) where they deem appropriate, accept copies of documents authenticated in accordance with domestic laws and regulations, in place of original documents.

4. If the results of the negotiations related to Article VI (4) of the GATS enter into effect, the Parties shall jointly review the results of such WTO negotiations and shall amend this Article, as appropriate, after consultation between the Parties to bring the results of such WTO negotiations into effect under this Chapter. 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, while recognizing the right to regulate and to introduce new regulations on the supply of services in order to meet its policy objectives, each Party shall endeavor 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.
5. (a) In sectors in which a Party has undertaken specific commitments, pending the entry into force of disciplines developed in these sectors pursuant to paragraph 4, the Party shall not apply licensing and qualification requirements and technical standards that nullify or impair such specific commitments in a manner which:
- (i) does not comply with the criteria outlined in subparagraphs 4(a), (b) or (c); and
 - (ii) could not reasonably have been expected of that Party at the time the specific commitments in those sectors were made.
- (b) In determining whether a Party is in conformity with the obligation under paragraph 5(a), account shall be taken of international standards of relevant international organizations⁷ applied by that Party.

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.

Article 6.11: Recognition

1. For purposes of fulfillment of their respective standards or criteria for the authorization, licensing or certification of services suppliers, and subject to paragraph 4 of this Article, each Party may recognize the education

⁷ The term "relevant international organizations" refers to international bodies whose membership is open to the relevant bodies of at least all Members of the WTO.

or experience obtained, requirements met, or licenses or certifications granted in the other Party. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement between the Parties or the relevant competent bodies 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 Party, if the other Party is interested, 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 education, experience, licenses, or certifications obtained or requirements met in the other Party's territory should be recognized.

3. Nothing in Article 6.4 shall be construed to require the Party to accord such recognition to the education or experience obtained, requirements met, or licenses or certifications granted in the other Party.

4. A Party shall not accord recognition in a manner which would constitute a means of discrimination between countries in the application of its standards or criteria for the authorization, licensing or certification of services suppliers, or a disguised restriction on trade in services.

5. Each Party shall endeavor:

- (a) within 12 months from the date on which this Agreement takes effect for it, to inform the Joint Committee of its existing recognition measures and state whether such measures are based on agreements or arrangements of the type referred to in paragraph 1;
- (b) to promptly inform the Joint Committee as far in advance as possible of the opening of negotiations on an agreement or arrangement of the type referred to in paragraph 1 in order to provide adequate opportunity to the other Party to indicate their interest in participating in the negotiations before they enter a substantive phase; and
- (c) to promptly inform the Joint Committee when it adopts new recognition measures or significantly modifies existing ones and state whether the measures are based on an agreement or arrangement of the type referred to in paragraph 1.

6. Wherever appropriate, recognition should be based on multilaterally agreed criteria. In appropriate cases, the Parties shall work in cooperation

with relevant intergovernmental and non-governmental organizations 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.

7. As set out in Annex 6-C, the Parties shall endeavor to facilitate trade in professional services.

Article 6.12: 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 commitments under this Chapter.

2. Where a Party's monopoly supplier competes, either directly or through an affiliated juridical person, 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 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. The provisions of this Article shall also apply to cases of exclusive service suppliers, where a Party, formally or in effect,

- (a) authorizes or establishes a small number of service suppliers; and
- (b) substantially prevents competition among those suppliers in its territory.

Article 6.13: Business Practices

1. The Parties recognize that certain business practices of service suppliers, other than those falling under Article 6.12, may restrain competition and thereby restrict trade in services.

2. Each Party shall, at the request of the other Party (the "Requesting Party"), enter into consultations with a view to eliminating practices referred

to in paragraph 1. The Party addressed (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 6.14: Safeguard Measures

1. The Parties shall review the incorporation of safeguard measures pending any further developments in the multilateral fora pursuant to Article X of GATS.
2. In the event that after the entry into force of this Agreement, a Party encounters difficulties in the implementation of commitments in this Chapter, that Party may request consultation with the other Party to address such difficulties.

Article 6.15: Payments and Transfers⁸

1. Each Party shall permit all transfers and payments relating to its commitments in the trade in services to be made freely and without delay into and out of its territory.
2. Each Party shall permit such transfers and payments relating to the trade in services to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.
3. Notwithstanding paragraphs 1 and 2, a Party may prevent or delay a transfer or payment through the equitable, non-discriminatory, and good faith application of its laws and regulations relating to:
 - (a) bankruptcy, insolvency, or the protection of the rights of creditors;
 - (b) issuing, trading, or dealing in securities, futures, options, or derivatives;
 - (c) criminal or penal offences;
 - (d) ensuring compliance with the judgments in judicial or

⁸ For greater certainty, Annex 7-C (Temporary Safeguard Measures) applies to this Article.

administrative proceedings;

- (e) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;
- (f) taxation; or
- (g) severance entitlement of employees.

Article 6.16: Denial of Benefits

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

- (a) person of a non-Party own or control the juridical person; and
- (b) 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 of a non-Party which operates and/or uses the vessel in whole or in part.

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 owned or controlled by persons of a non-Party or of the denying Party that has no substantial business activities in the territory of the other Party. If, before denying the benefits of this Chapter, the denying Party knows that the juridical person has no substantial business activities in the territory of the other Party and that persons of a non-Party, or of the denying Party, own or control the juridical person, the denying Party shall, to the extent practicable, notify the other Party before denying the benefits.

Article 6.17: Progressive Liberalization

The Parties shall, at the reviews pursuant to Article 13.5 (Review of the Agreement) enter into successive rounds of negotiations to negotiate further packages of specific commitments under this Chapter so as to progressively liberalize trade in services between the Parties.

Article 6.18: Cooperation

The Parties shall strengthen cooperation efforts in services sectors, including sectors which are not covered by existing cooperation arrangements. The Parties shall discuss and mutually agree on the sectors for cooperation and develop cooperation programs in these sectors in order to improve their domestic capacities, efficiencies and competitiveness.