

**APPENDIX 4**

**NEW CHAPTER 8 (TRADE IN SERVICES)**

## CHAPTER 8

### TRADE IN SERVICES

#### Article 8.1: Definitions

For the purposes of this Chapter:

**airport operation services** means the operation of centralized airport infrastructure<sup>2</sup> on a fee or contract basis, including the provision of airport management services, excluding security and air navigation services<sup>3</sup>;

**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;

**ground handling services** means the following services provided at the airport on a fee or contract basis: airline representation, administration and supervision, passenger handling services, baggage handling services, ramp handling services (marshalling, parking, ramp to flight deck communication), catering (excluding cooking), cargo and mail handling services, fuel distribution services, aircraft services and cleaning services, load control, flight operation and crew administration, line maintenance. Ground Handling Services do not include air navigation services, security and fire-fighting services, and the operation of centralized airport infrastructure;

**juridical person** means an entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including a corporation, trust, partnership, sole proprietorship, joint venture or association;

**juridical person** is:

- (a) “owned” by persons of a Party if more than 50% of the equity in it is beneficially owned by persons of that Party; and

<sup>2</sup> For greater certainty, the centralized airport infrastructure includes: 1. runways, taxiways, and aprons; 2. Facilities built to avoid duplicate construction for use by different service providers, such as common use terminals, baggage handling systems, de-icing facilities, power and energy systems, fuel storage and distribution systems and water treatment facilities, etc.

<sup>3</sup> For the purposes of this chapter, Parties consider air traffic control services as part of air navigation services.

- (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;

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

**natural person of a Party** means a natural person who resides in the territory of a Party, and who under the law of that Party is a national of that Party;

**service supplier of a Party** means any person of that Party that supplies a service;<sup>4</sup>

**service supplied in the exercise of governmental authority** means, for each party, any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers;

**specialty air services** means any non-transportation air services, such as aerial fire-fighting, spraying, surveying, mapping, photography, parachute jumping, glider towing, and helicopter-lift for logging and construction, and other airborne agricultural, industrial and inspection services;

**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 by a person of that Party to a person 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 through presence of natural persons of a Party in the territory of the other Party.

<sup>4</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 the 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.

## Article 8.2: Scope

1. This Chapter applies to measures adopted or maintained by a Party affecting trade in services by service suppliers of the other Party. Such measures include measures affecting:

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

2. For purposes of this Chapter, “measures adopted or maintained by a Party” means measures adopted or maintained 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 does not apply to:

- (a) government procurement;
- (b) services supplied in the exercise of governmental authority in a Party’s territory;
- (c) air services<sup>5</sup>, including domestic and international air transportation services, whether scheduled or non-scheduled, and related services in support of air services, other than:
  - (i) aircraft repair and maintenance services;
  - (ii) selling and marketing of air transport services;
  - (iii) computer reservation system (CRS) services;
  - (iv) specialty air services;
  - (v) airport operation services; and
  - (vi) ground handling services.

<sup>5</sup> For greater certainty, the term “air services” includes traffic rights.

- (d) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance.

4. In the event of any inconsistency between this Chapter and a bilateral, plurilateral or multilateral air services agreement to which both Parties are party, the air services agreement shall prevail in determining the rights and obligations of the Parties.

5. If the Parties have the same obligations under this Agreement and a bilateral, plurilateral or multilateral air services agreement, they may invoke the dispute settlement procedures of this Agreement only after any dispute settlement procedures in the other agreement have been exhausted.

6. If the Annex on Air Transport Services of GATS is amended, the Parties shall jointly review any new definition with a view to aligning the definitions in this Optimization Protocol with that definition, as appropriate.

7. This Chapter does not impose any obligation on a Party with respect to a natural person of the other Party seeking access to its employment market, or employed on a permanent basis in its territory, and does not confer any right on that natural person with respect to that access or employment.

8. 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 benefits accruing to the other Party under the terms of this Chapter.<sup>6</sup>

9. This Chapter, except for Article 8.3, 8.4, 8.5 and the specific commitments undertaken on financial services in Annex 6(Schedules of Specific Commitments) of the Free Trade Agreement, does not apply to measures affecting the supply of financial services<sup>7</sup> as defined in subparagraph 5(a) of the GATS Annex on Financial Services. The obligations of each Party with respect to measures affecting the supply of financial services shall be in accordance with its obligations under GATS and the GATS Annex on Financial Services, and subject to any reservations thereto. The said obligations are hereby incorporated into this Agreement.

10. In addition to the provisions of this Chapter, the rights and obligations of the Parties in respect of telecommunication services shall also be governed by the provisions of:

<sup>6</sup> The sole fact of requiring a visa for natural persons of the other Party shall not be regarded as nullifying or impairing benefits under a specific commitment.

<sup>7</sup> For greater certainty, “the supply of financial services” means the supply of services as defined in GATS Article I.2.

- (a) the GATS Annex on Telecommunications; and
- (b) the GATS Reference Paper developed in the Negotiating Group on Basic Telecommunications attached to each Party's GATS schedules of commitments,

which are hereby incorporated into this Chapter, *mutatis mutandis*, as if those provisions were fully set out herein.

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

In the sectors inscribed in its Schedule, and subject to any condition and qualification set out therein, each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords, in like circumstances, to its own services and service suppliers.

### **Article 8.4: Market Access**

1. With respect to market access through the modes of supply identified in the "trade in services" definition of Article 8.1, each Party shall accord to 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<sup>8</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, 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;

<sup>8</sup> To the extent that a market-access commitment is undertaken by a Party in its Schedule of Commitments, and where the cross-border movement of capital is an essential part of a service supplied through the mode of supply referred to in subparagraph (a) of the "trade in services" definition of Article 8.1, that Party is hereby committed to allow such movement of capital. To the extent that a market-access commitment is undertaken by a Party in its Schedule of Commitments, and where a service is supplied through the mode of supply referred to in subparagraph (c) of the "trade in services" definition of Article 8.1, that Party is hereby committed to allow related transfers of capital into its territory.

- (c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;<sup>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; or
- (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 8.5: Additional Commitments**

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Article 8.3 or 8.4, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Party's Schedule.

#### **Article 8.6: Schedule of Specific Commitments**

1. Each Party shall set out in a schedule the specific commitments it undertakes under Article 8.3, 8.4 and 8.5. 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; and
- (c) undertakings relating to additional commitments referred to in Article 8.5.

2. Measures inconsistent with both Articles 8.3 and 8.4 are inscribed in the column relating to Article 8.4. In this case, the inscription is considered to provide a condition or qualification to Article 8.3 as well.

3. The Parties' Schedules of Specific Commitments are set out in Annex 6 (Schedules of Specific Commitments) of the Free Trade Agreement.

<sup>9</sup> Subparagraph 2(c) does not cover measures of a Party which limit inputs for the supply of services.

## **Article 8.7: 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. Each Party shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, upon request of an affected service supplier of the other Party, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.

3. Where a Party requires authorization for the supply of a service, the Party's competent authorities shall, 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. Upon request of the applicant, the competent authorities of the Party shall provide, without undue delay, information concerning the status of the 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, each Party shall aim to ensure that such measures 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. If the results of the negotiations related to Article VI:4 of GATS (or the results of any similar negotiations undertaken in other multilateral fora in which the Parties participate) enter into effect, this Article shall be amended, as appropriate, after consultations between the Parties, to bring those results into effect under this Agreement. The Parties agree to coordinate on such negotiations, as appropriate.

6. If a Party requires authorisation for the supply of a service, it shall ensure that its competent authorities:

- (a) where applicable, if an application is rejected, to the extent practicable, inform the applicant of the reasons for the rejection, either directly or upon request, as appropriate;



- (b) to the extent practicable, provide the applicant with the opportunity to correct minor errors and omissions in the application;
- (c) if they deem appropriate, accept copies of documents that are authenticated in accordance with the laws of the Party in place of original documents;
- (d) reach and administer its decisions in an independent manner<sup>10</sup> and that the procedures are impartial;
- (e) where applicable in accordance with the laws and regulations, avoid requiring an applicant to approach more than one competent authority for each application for authorization; and
- (f) taking into account their competing priorities and resource constraints, endeavour to accept applications in electronic format.

7. Each Party shall ensure that any authorisation fee charged by any of its competent authorities is in accordance with its laws and regulations, reasonable, transparent and does not, in itself, restrict the supply of the relevant service.<sup>11</sup>

8. The Party shall make publicly available the information necessary for service suppliers to comply with the requirements and procedures for obtaining, maintaining, amending and renewing such authorisation. Such information shall include, *inter alia*, where it exists in accordance with its laws and regulations:

- (a) fees;
- (b) contact information of relevant competent authorities;
- (c) procedures for appeal or review of decisions concerning applications;
- (d) procedures for monitoring or enforcing compliance with the terms and conditions of licenses;
- (e) opportunities for public involvement, such as through hearings or comments;
- (f) indicative timeframes for processing of an application;
- (g) the requirements and procedures; and
- (h) technical standards.

<sup>10</sup> For greater certainty, this paragraph does not mandate a particular administrative structure.

<sup>11</sup> For the purposes of this paragraph, authorisation fees do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

9. If licensing or qualification requirements include the completion of an examination, each Party shall 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.

#### **Article 8.8: 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, and subject to the requirements of paragraph 3, a Party may recognise the education or experience obtained, requirements met, or licenses or certifications granted in the territory of the other Party or a non-party. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the other Party or a non-party 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 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 territory of the other Party should be recognised.

3. 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.

4. Each Party should encourage the relevant bodies in its respective territory to conduct future negotiations for developing mutually acceptable standards and criteria for licensing, temporary licensing and certification of professional services suppliers.

#### **Article 8.9: Transfers and Payments**

1. Each Party shall permit transfers and payments for current transactions relating to its specific commitments 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 supply of services to be made in a freely usable currency at the market rate of exchange prevailing on the date of transfer.

3. Notwithstanding paragraph 1 and paragraph 2, a Party may prevent or delay a transfer or payment through the equitable, non-discriminatory and good faith application of its laws 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) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;
- (d) criminal or penal offences; or
- (e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

4. Nothing in this Chapter shall affect the rights and obligations of the members of the International Monetary Fund under the *Articles of the Agreement of the International Monetary Fund*, including the use of exchange actions which are in conformity with the *Articles of the Agreement of the International Monetary Fund*, provided that a Party shall not impose restrictions on any capital transactions inconsistent with its obligations under this Chapter regarding such transactions, except upon request of the International Monetary Fund.

#### **Article 8.10: Denial of Benefits**

1. A Party may deny the benefits of this Chapter to:

- (a) service suppliers of the other Party where the service is being supplied by a juridical person that is owned or controlled by persons of a non-party and the juridical person has no substantive business activities in the territory of the other Party; or
- (b) service suppliers of the other Party where the service is being supplied by a juridical person that is owned or controlled by persons of the denying Party and the juridical person has no substantive business activities in the territory of the other Party.

2. Upon a written request of the other Party, the denying Party shall inform in writing and consult with the other Party on the specific case of denial as referred to in paragraph 1 of this Article.

### **Article 8.11: Transparency**

Further to Chapter 13 (Transparency):

- (a) each Party shall maintain or adopt appropriate mechanisms for responding to inquiries from interested persons regarding its laws and regulations relating to the subject matter of this Chapter;<sup>12</sup>
- (b) at the time it adopts final laws and regulations relating to the subject matter of this Chapter, each Party shall, to the extent possible, including upon request, take into consideration of substantive comments received from interested persons with respect to the proposed laws and regulations; and
- (c) to the extent possible, each Party shall allow a reasonable period of time between publication of final laws and regulations and their effective date.

### **Article 8.12: Committee on Trade in Services**

1. The Parties hereby establish a Committee on Trade in Services (Committee) that shall meet as agreed by the Parties, or on request of the Free Trade Commission, to consider any matter arising under this Chapter.
2. The Committee's functions shall include:
  - (a) reviewing the implementation and operation of this Chapter;
  - (b) identifying and recommending measures to promote services trade between the Parties and ensure the observance of and discuss progress towards the objectives mentioned in the Annexes 8-A, 8-B, 8-C, and 8-D; and
  - (c) considering other trade in services issues of interest to a Party.
3. With the agreement of both Parties, representatives from relevant agencies or institutions may be invited to attend the Committee meetings.

<sup>12</sup> The implementation of the obligation to establish appropriate mechanisms for small administrative agencies may need to take into account resource and budget constraints.

## **ANNEX 8-A**

### **PROFESSIONAL SERVICES**

1. Each Party shall encourage its relevant bodies to establish or maintain dialogues with the relevant bodies of the other Party with the aim of facilitating the supply of professional services between the Parties through greater recognition of education or experience obtained in the territory of the other Party. This includes encouraging relevant professional bodies to engage in cooperation with a view to formalising recognition of licensing, registration and professional standards.

#### **Engineering and Architectural Services**

2. Further to paragraph 1, the Parties recognise the work in APEC to promote the mutual recognition of professional competence in engineering and architecture, and the professional mobility of these professions, under the APEC Engineer and APEC Architect frameworks.

3. Each Party shall encourage its relevant bodies to work towards becoming authorised to operate APEC Engineer and APEC Architect Registers.

4. A Party shall encourage its relevant bodies operating APEC Engineer or APEC Architect Registers to enter into mutual recognition arrangements with the relevant bodies of the other Party operating those registers.

#### **Software Engineering Services**

5. Further to paragraph 1, paragraph 2, paragraph 3 and paragraph 4, by recognising the importance of software industries for cross-border trade of value-added services, the Parties agree to work together to promote highly qualified knowledge of Software Engineers, including by promoting its experience in best practices for creating software solutions tailored for the needs of the services industry. This includes encouraging relevant bodies to engage in cooperation with a view to negotiating a cooperation agreement.

#### **Professional Services Cooperation**

The Parties shall cooperate, via the Committee on Trade in Services to facilitate the cooperation to:

- (a) ensure the observance of and discuss progress towards the objectives in paragraph 1 paragraph 2, paragraph 3, paragraph 4 and paragraph5 of this annex; and

- (b) support the Parties' relevant professional and regulatory bodies in pursuing the activities listed in paragraph 1, paragraph 2, paragraph 3, paragraph 4 and paragraph 5 of this annex.

## **ANNEX 8-B**

### **TRANSPORT SERVICES**

#### **Section A: International Maritime Transport services**

##### **General provisions<sup>13</sup>**

1. International maritime transport services means maritime transport of cargo or passengers between a port of a Party and a port of another Party or a non-party;
2. The Parties recognise their respective rights and obligations under international instruments to which they are parties respectively that regulate international maritime transport and related activities.
3. The Parties recognise the commercial significance of the ability of international maritime transport service suppliers to directly contracting with other transport service suppliers for door-to-door or multimodal transport operations.
4. The Parties shall encourage the service suppliers to improve their respective multimodal transport services to facilitate the bilateral maritime and trade cooperation.

##### **Maritime Crew**

5. The Parties will jointly work in facilitating the recognition of seafarer's qualifications through the Professional services working group.
6. The Parties shall endeavour to undertake and strengthen cooperation activities between them to:
  - (a) promote and share information on education and training opportunities for personnel engaged in maritime transport services;
  - (b) promote the exchange of students between academic merchant marine training centres of the Parties subject to availability and the selection processes determined by each Party; and
  - (c) explore the possibility of working in the pursuit of mechanisms to facilitate and promote the on-board training for students on the vessels of the Parties.

<sup>13</sup> Nothing in this Annex shall be interpreted to apply to fishing vessels as defined under a Party's domestic law, nor does it apply to vessels or international maritime transport services suppliers that are subject to the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.

### **Port Fees and Charges**

7. Each Party shall recognise the International Tonnage Certificate (1969) duly issued to a vessel of an international maritime transport service supplier of another Party in accordance with the *International Convention on Tonnage Measurement of Ships, 1969* (Convention). Tonnage based port charges and expenses shall be collected on the basis of tonnage as stated in the International Tonnage Certificate (1969) or, in the case of a vessel not subject to the Convention, the certificate of registry.

8. If a Party decides to carry out an inspection related to the tonnage of a vessel, such inspection shall be carried out in compliance with the Convention.

### **Section B: Rail Transport Services**

9. By recognising the commercial significance of rail transport, the Parties shall endeavour to work towards efficient rail freight and passenger transport services with a view to foster multimodal transport and tourism.



## **ANNEX 8-C**

### **COOPERATION ON CULTURAL AND AUDIOVISUAL SERVICES**

1. For the purposes of this Appendix, the Parties understand that Audiovisual Industries comprise motion picture and video production and the related services, including audiovisual production support services.
2. By recognising the importance of their audiovisual industries and their potential technical and creative complementarity, as well as mutual equal benefit, the Parties will explore the possibility of reaching co-production agreement.
3. Each Party shall encourage on-site filming in the territory of the other Party for the development of audiovisual projects by their service providers, in accordance with the relevant laws and regulations of each Party.
4. Each Party shall encourage its relevant bodies to establish or maintain dialogues with the relevant bodies of the other Party with the aim of improving the knowledge and practice of professionals and technicians related to the audiovisual industries.

## ANNEX 8-D

### TELECOMMUNICATIONS SERVICES

#### Definitions

1. For the purposes of this Annex:

**International Mobile Roaming Service** means a commercial mobile service provided pursuant to a commercial agreement between suppliers of public telecommunications services that enables end-users to use their home mobile handset or other device for voice, data or messaging services while outside the territory in which the end-user's home public telecommunications network is located;

**non-discriminatory** means treatment no less favourable than that accorded to any other user of like public telecommunications services in like circumstances, including with respect to timeliness;

**Telecommunications Regulatory Body** means a body or bodies responsible for the regulation of telecommunications; and

**user** means a service consumer or a service supplier.

#### International Submarine Cable Systems

2. The Parties will encourage and facilitate the development of international submarine cable systems with a view to enhancing telecommunication services, improving consumer welfare, fostering electronic commerce, promoting technological diffusion and development of digital societies, among others.

3. Each Party shall ensure that any major supplier who controls international submarine cable landing stations in the Party's territory provides access to those landing stations, under non-discriminatory terms, conditions and rates in accordance with its laws and regulations.

#### International Mobile Roaming Services

4. The Parties shall cooperate on promoting transparent and reasonable rates and increase the efficiency of international mobile roaming services with a view to promoting the growth of trade among the Parties and enhancing consumer welfare.

5. The Parties shall encourage their respective telecommunications service suppliers to take actions to ensure rates for wholesale international roaming services are reasonable, and facilitate the implementation of those actions, including by encouraging their

respective telecommunications service suppliers entering into negotiations for an International Mobile Roaming Agreement.

6. Each Party shall adopt or maintain measures to minimise impediments to the use of technological alternatives to roaming, whereby consumers when visiting the territory of a Party from the territory of another Party can access telecommunications services using the device of their choice.