CHAPTER 8

TRADE IN SERVICES

Article 8.1: Definitions

For the purposes of this Chapter:

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;

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 seeks to supply or supplies a service; and

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 of a Party, through presence of natural persons of that Party in the territory of the other Party.

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 production, distribution, marketing, sale and delivery of a service;

(b) the purchase or use of, or payment for, a service;

(c) the access to and use of distribution, transport, or telecommunications networks and services in connection with the supply of a service; and

(d) the presence, in its territory of a service supplier of the other Party.

2. For the 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) air services[1], 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; and

(iii) computer reservation system (CRS) services; and

(c) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance, except for Article 8.3 (Subsidies).

4. 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.

5. This Chapter does not apply to services supplied in the exercise of governmental authority in the territory of a Party. "**A service supplied in the exercise of governmental authority**" means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.

6. 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

[1] For greater certainty, the term **"air services"** includes traffic rights.

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.[2]

7. In addition to the provisions of this Chapter, the rights and obligations of the Parties with respect to telecommunication services shall also be governed by the provisions of GATS Annex on Telecommunications; which is hereby incorporated into this Chapter, *mutatis mutandis*.

Article 8.3: Subsidies

1. The Party which considers that it is adversely affected by a subsidy or grant of the other Party may request consultations with the other Party on such matters. Such requests shall be accorded sympathetic consideration.

2. If the results of the negotiations related to Article XV:1 of the GATS enter into force for any Party, this Article shall be modified, as appropriate, after consultations between the Parties, to bring those results into force under this Agreement.

Article 8.4: National Treatment

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 treatment no less favourable than that it accords, in like circumstances, to its own services and service suppliers.

Article 8.5: Most-Favoured-Nation Treatment[3]

1. A Party shall accord to services and service suppliers of the other Party treatment no less favourable than the treatment it accords, in like circumstances, to services and service suppliers of a non-Party.

2. Notwithstanding paragraph 1, if a Party enters into any agreement related to trade in services with a non-Party after this Agreement enters into force, it shall consider a request by the other Party for treatment no less favourable than that provided under such agreement with the non-Party. No Party shall be obligated to accord such treatment to the other Party until the request has been submitted, considered, negotiated and agreed to by both Parties.

3. Treatment granted under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement shall not be subject to paragraph 1.

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[2] 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.

[3] For greater certainty, the most-favorable treatment accorded under this Article shall not cover immigration measures.

Article 8.6: Market Access

1. With respect to market access through the modes of supply identified in the **"trade in services"** definition of Article 8.1 (Definitions), 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[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;

(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 8.7: Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Article 8.4 (National Treatment) or Article 8.6 (Market

[4] 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 (Definitions), 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 (Definitions), that Party is hereby 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.

Access), including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Schedule of a Party.

Article 8.8: Schedule of Specific Commitments

1. Each Party shall set out in a Schedule the specific commitments it undertakes under Article 8.4 (National Treatment), Article 8.6 (Market Access) and Article 8.7 (Additional Commitments). 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;

(c) undertakings relating to additional commitments referred to in Article 8.7 (Additional Commitments); and

(d) where appropriate, the time-frame for implementation of such commitments and the date of entry into force of such commitments.

2. Measures inconsistent with both Article 8.4 (National Treatment) and Article 8.6 (Market Access) are inscribed in the column relating to Article 8.6 (Market Access). In this case, the inscription is considered to provide a condition or qualification to Article 8.4 (National Treatment) as well.

3. The Schedules of Specific Commitments of the Parties are set out in Annex 8-A (Schedules of Specific Commitments).

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. 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 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 authorisation for the supply of a service, the competent authorities of the Party 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. At the 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 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. Each Party shall, to the extent practicable, avoid requiring an applicant to approach more than one competent authority for each application for authorisation. If a service is within the jurisdiction of multiple competent authorities, multiple applications for authorisation may be required.

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

(a) taking into account their competing priorities and resource constraints, endeavour to accept applications in electronic format;

(b) accept copies of documents, that are authenticated in accordance with the Party's domestic laws and regulations, in place of original documents, unless the competent authorities require original documents to protect the integrity of the authorisation process;

(c) to the extent practicable, provide 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) to the extent practicable, ascertain without undue delay the completeness of an application for processing under the Party's domestic laws and regulations;

(f) if they consider an application complete for processing under the Party's domestic laws and regulations,[6] within a reasonable period of time after the submission of the application ensure that:

(i) the processing of the application is completed; and

(ii) the applicant is informed of the decision concerning the application,[7] to the extent possible in writing;[8]

(g) if they consider an application incomplete for processing under the Party's domestic laws and regulations, within a reasonable period of time, to the extent practicable:

(i) inform the applicant that the application is incomplete;

(ii) at the request of the applicant, identify the additional information required to complete the application, or otherwise provide guidance on why the application is considered incomplete; and

(iii) provide the applicant with the opportunity[9] to provide the additional information that is required to complete the application;

however, if none of the above is practicable, and the application is rejected due to incompleteness, ensure that they so inform the applicant within a reasonable period of time; and

(h) if an application is rejected, to the extent possible, either upon their own initiative or upon request of the applicant, inform the applicant of the reasons for rejection and, if applicable, the procedures for resubmission of an application; an applicant should not be prevented from submitting another application[10] solely on the basis of a previously rejected application.

7. The competent authorities of a Party shall ensure that authorisation, once granted, enters into effect without undue delay, subject to applicable terms and conditions.[11]

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[6] Competent authorities may require that all information is submitted in a specified format to consider it "complete for processing".

[7] Competent authorities may meet this requirement by informing an applicant in advance in writing, including through a published measure, that lack of response after a specified period of time from the date of submission of an application indicates acceptance of the application or rejection of the application.

[8] "In writing" may include in electronic form.

[9] Such opportunity does not require a competent authority to provide extensions of deadlines.

[10] Competent authorities may require that the content of such an application has been revised.

[11] Competent authorities are not responsible for delays due to reasons outside their competence.

8. Each Party shall ensure that the authorisation fees[12] charged by its competent authorities are reasonable, transparent, based on authority set out in a measure, and do not in themselves restrict the supply of the relevant service.

9. If a Party requires an examination for authorisation for the supply of a service, that Party shall ensure that its competent authorities schedule such an examination at reasonably frequent intervals and provide a reasonable period of time to enable applicants to request to take the examination. Having regard to the cost, administrative burden, and the integrity of the procedures involved, Parties are encouraged to accept requests in electronic format to take such examinations, and to consider, to the extent practicable, the use of electronic means in other aspects of examination processes.

10. If a Party adopts or maintains measures relating to the authorisation for the supply of a service, the Party shall ensure that its competent authorities reach and administer their decisions in a manner independent from any supplier of the service for which authorisation is required.[13]

11. If a Party requires authorisation for the supply of a service, further to Article 13.2 (Publication and Public Access), the Party shall promptly publish,[14] or otherwise make publicly available in writing, the information necessary for service suppliers or persons seeking to supply a service to comply with the requirements and procedures for obtaining, maintaining, amending and renewing such authorisation. Such information shall include, *inter alia*, where it exists:

(a) the requirements and procedures;

(b) contact information of relevant competent authorities;

(c) fees;

(d) technical standards;

(e) procedures for appeal or review of decisions concerning applications;

(f) procedures for monitoring or enforcing compliance with the terms and conditions of licenses or qualifications;

(g) opportunities for public involvement, such as through hearings or comments; and

(h) indicative timeframes for processing of an application.

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[12] 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.
[13] For greater certainty, this provision does not mandate a particular administrative structure; it refers to the decision-making process and administering of decisions.
[14] For purposes of these disciplines, "publish" means to include in an official publication, such as an official journal, or on an official website. The Parties are encouraged to consolidate electronic publications into a single portal.

12. 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.

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 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 a particular country, including the other Party and non-Parties. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.

2. Where a Party recognises, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licenses or certifications granted in the territory of a non-Party, nothing in Article 8.5 (Most-Favoured-Nation Treatment) 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 territory of the other Party.

3. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity for the other Party, 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, licences or certifications obtained or requirements met in the territory of that other Party should be recognised.

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 authorisation, licensing or certification of services suppliers, or a disguised restriction on trade in services.

5. Each Party shall 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 8.11: Transfers and Payments

1. Each Party shall permit transfers and payments for current transactions related 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 related 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 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 related 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 any of the Parties as members of the *International Monetary Fund* (hereinafter referred to as the "IMF") under the *Articles of Agreement of the International Monetary Fund*, including the use of exchange actions which are in conformity with the *Articles of Agreement of the International Monetary Fund*, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except under Article 16.4 (Temporary Safeguard Measures) or at the request of the IMF.

Article 8.12: Denial of Benefits

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.

Article 8.13: Transparency

1. Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding its laws and regulations related to the subject matter of this Chapter.[15]

2. At the time it adopts final laws and regulations related 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.

3. To the extent possible, each Party shall allow a reasonable period of time between publication of final laws and regulations and their effective date.

4. Each Party shall publish promptly or otherwise make publicly available international agreements pertaining to or affecting trade in services to which it is a signatory.

Article 8.14: Implementation and Review

The Parties shall consult annually, or as otherwise agreed, to review the implementation of this Chapter and consider other matters of mutual interest affecting trade in services. Among other issues, the Parties may consult with a view to determining the feasibility of removing any remaining citizenship or permanent residency requirements for the supply of services in the territory of each Party. Such consultations may also include consideration of the development of procedures that could contribute to greater transparency of measures related with sectors or activities not committed in the respective schedules.

Article 8.15: Financial Services Commitments

The Parties agree to evaluate and to consult each other, two years after the entry into force of this Agreement, about the improvement of the financial services commitments contained in Annex 8-B (Financial Services) and the negotiation of market access and national treatment commitments for financial services.[16]

Article 8.16: Annexes

The following Annexes attached to this Chapter constitute an integral part of this Agreement:

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[15] The implementation of the obligation to establish appropriate mechanisms for small administrative agencies may need to take into account resource and budget constraints.

[16] For greater certainty, Article 8.9 (Domestic Regulation) of this Chapter is not applicable to financial services. In this regard, the improvement of Article 8-B.3 (Regulatory Transparency) shall also include domestic regulation aspects.

- Annex 8-A (Schedules of Specific Commitments); and
- Annex 8-B (Financial Services).