

## **CHAPTER 8** **TRADE IN SERVICES**

### PART I: SCOPE AND DEFINITIONS

#### ARTICLE 8.1: SCOPE

1. This Chapter shall apply to measures adopted or maintained by a Party affecting trade in services, including measures in respect of:

- (a) the production, distribution, marketing, sale or delivery of a service;
- (b) the purchase or use of, or payment for, a service;
- (c) 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
- (d) the presence in its territory of a service supplier of the other Party.

2. This Chapter shall not apply to:

- (a) measures affecting air traffic rights, however granted, or measures affecting services directly related to the exercise of air traffic rights and air traffic control and air navigation services, other than measures affecting:
  - (i) aircraft repair and maintenance services;
  - (ii) the selling and marketing of air transport services;
  - (iii) computer reservation system (“CRS”) services;
  - (iv) airport operation services;
  - (v) ground handling services; and
  - (vi) specialty air services.

The Parties note the multilateral negotiations pursuant to the review of the Annex on Air Transport Services of GATS. Upon the conclusion of such multilateral negotiations, the Parties shall conduct a review for the purpose of discussing appropriate amendments to this Agreement so as to incorporate the results of such multilateral negotiations.

- (b) government procurement;

- (c) services supplied in the exercise of governmental authority in a Party's territory;
- (d) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance; and
- (e) 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.

## ARTICLE 8.2: DEFINITIONS

For the purposes of this Chapter:

- (a) **aircraft repair and maintenance services** means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and does not include so-called "line maintenance";
- (b) **airport operation services** means passenger air terminal, airfield and other airport infrastructure operation services excluding airport security services and services covered in ground handling services;
- (c) **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 a representative office, within the territory of a Party for the purpose of supplying a service;
- (d) **computer reservation system services** mean 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;
- (e) **controlled** means having the power to name a majority of directors or otherwise legally direct a juridical person's actions;
- (f) **ground handling services** means the provision, by a third party on a fee or contract basis, of the following activities performed at an airport: airline representation, administration and supervision; passenger handling services; ramp services; air cargo and baggage handling services; and load

control and flight operation services. Ground handling services do not include security, aircraft repair and maintenance services or management of essential centralised airport infrastructure;

- (g) **juridical person** of a Party 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, partnership, joint venture, sole proprietorship or association, which is either:
- (i) constituted or otherwise organised in accordance with the law of that Party, and is engaged in substantive business operations in the territory of that Party; 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 Party identified under subparagraph (i);
- (h) **measure** means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action or any other form, 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;
- (i) **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 the Parties 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;
- (j) **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;

- (k) **natural person of a Party** means a natural person who under the law of the Party,
  - (i) for Australia, is an Australian citizen or a permanent resident of Australia; and
  - (ii) for China, is a natural person who under the Chinese law is a national of China;
- (l) **owned** means holding more than 50 percent of the equity interest in a juridical person;
- (m) **person of a Party** means either a natural person or a juridical person of a Party;
- (n) **qualification procedures** means administrative procedures relating to the administration of qualification requirements;
- (o) **qualification requirements** means substantive requirements which a service supplier is required to fulfil in order to obtain certification or a licence;
- (p) **sector of a service** means, with reference to a specific commitment, one or more or all subsectors of that service, as specified in a Party's Schedule in Annex III, or otherwise the whole of that service sector, including all of its subsectors;
- (q) **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, but do not include the pricing of air transport services nor the applicable conditions;
- (r) **services** includes any service in any sector except services supplied in the exercise of governmental authority;
- (s) **service consumer** means any person that receives or uses a service;
- (t) **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;

- (u) **service supplier of a Party** means any person of a Party that supplies a service;<sup>1</sup>
- (v) **specialty air services** means any non-transportation air services, such as aerial fire-fighting, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, and helicopter-lift for logging and construction, and other airborne agricultural, industrial and inspection services;
- (w) **supply of a service** includes the production, distribution, marketing, sale and delivery of a service;
- (x) **trade in services** means the supply of a service:
  - (i) from the territory of a Party into the territory of the other Party (“cross-border supply mode”);
  - (ii) in the territory of a Party to the service consumer of the other Party (“consumption abroad mode”);
  - (iii) by a service supplier of a Party, through commercial presence in the territory of the other Party (“commercial presence mode”); and
  - (iv) by a service supplier of a Party, through presence of natural persons of that Party in the territory of the other Party (“presence of natural persons mode” or “movement of natural persons mode”);
- (y) **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.

## PART II: SCHEDULING APPROACH

### ARTICLE 8.3: SCHEDULING OF COMMITMENTS

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<sup>1</sup> Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the juridical person) shall, nonetheless, through such commercial presence be accorded the treatment provided for service suppliers in accordance with this Chapter. Such treatment shall be extended to the commercial presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the territory of a Party where the service is supplied.

Each Party shall make commitments on National Treatment, Market Access and Most-Favoured-Nation Treatment in accordance with either Section A or Section B.

### **Section A: Positive Listing Approach**

#### **ARTICLE 8.4: SCHEDULE OF SPECIFIC COMMITMENTS**

1. Where a Party schedules commitments in accordance with this Section, it shall set out in a schedule, called its Schedule of Specific Commitments, the specific commitments it undertakes in accordance with Articles 8.5, 8.6 and 8.8. With respect to sectors where such commitments are undertaken, its Schedule of Specific Commitments shall specify:

- (a) terms, limitations and conditions on market access;
- (b) conditions and qualifications on national treatment;
- (c) undertakings relating to additional commitments; and
- (d) where appropriate, the time-frame for implementation of such commitments.

2. Measures inconsistent with both Articles 8.5 and 8.6 shall be inscribed in the column relating to Article 8.6. In this case the inscription will be considered to provide a condition or qualification to Article 8.5 as well.

3. Schedules of Specific Commitments are annexed to this Agreement as Annex III and shall form an integral part thereof.

#### **ARTICLE 8.5: NATIONAL TREATMENT**

1. Where a Party schedules commitments in accordance with this Section, in the sectors inscribed in its Schedule of Specific Commitments in Annex III, and subject to any conditions and qualifications set out therein, it shall accord to services and service suppliers of the other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.<sup>2</sup>

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<sup>2</sup> Specific commitments assumed under this Article shall not be construed to require the Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

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 8.6: MARKET ACCESS

1. Where a Party schedules commitments in accordance with this Section, with respect to market access through the modes of supply identified in Article 8.2(x), it 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 in Annex III.<sup>3</sup>

2. In sectors where market access commitments are undertaken, the measures which a Party shall not maintain or adopt, either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule of Specific Commitments in Annex III, 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;<sup>4</sup>
- (d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;

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<sup>3</sup> If a Party undertakes a market access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (x)(i) of Article 8.2, and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (x)(iii) of Article 8.2, it is thereby committed to allow related transfers of capital into its territory.

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

- (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: MOST-FAVoured-NATION TREATMENT**

1. Where a Party schedules commitments in accordance with this Section, in respect of the services sectors listed in Annex 8-A, and subject to any conditions and qualifications set out therein, the Party shall accord 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.<sup>5</sup>
2. Notwithstanding paragraph 1, a Party may adopt or maintain any measure that accords differential treatment to any non-party in accordance with any free trade agreement or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.
3. For greater certainty, paragraph 2 includes, in respect of agreements on the liberalisation of trade in goods or services or investment, any measures taken as part of a wider process of economic integration or trade liberalisation.
4. For sectors not covered by paragraph 1, if, after the date of entry into force of this Agreement, a Party subsequently enters into any agreement with a non-party in which it provides treatment to services or service suppliers of that non-party more favourable than it accords to like services or service suppliers of the other Party, the other Party may request consultations to discuss the possibility of extending, under this Agreement, treatment no less favourable than that provided under the agreement with the non-party. In such circumstances, the Parties shall enter into consultations bearing in mind the overall balance of benefits.
5. The provisions of this Agreement shall not be construed as to prevent a Party from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.

#### **ARTICLE 8.8: ADDITIONAL COMMITMENTS**

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<sup>5</sup> For the purposes of this Article, the term “non-party” shall not include the following WTO members within the meaning of the WTO Agreement: (1) Hong Kong, China; (2) Macao, China; and (3) Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei).

A Party making commitments in accordance with this Section may also negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 8.5 and 8.6, including but not limited to those regarding qualification, standards or licensing matters. Such commitments shall be inscribed in that Party's Schedule of Specific Commitments in Annex III.

## **Section B: Negative Listing Approach**

### **ARTICLE 8.9: SCHEDULE OF NON-CONFORMING MEASURES**

1. For a Party making commitments in accordance with this Section, Articles 8.10 through 8.12 shall not apply to:

- (a) any non-conforming measure that is maintained by the following on the date of entry into force of this Agreement, as set out in Section A of a Party's Schedule of Non-Conforming Measures in Annex III:
  - (i) the central government of a Party; or
  - (ii) a regional level of government;
- (b) any non-conforming measure that is maintained by a local level of government other than a regional level of government referred to in subparagraph (a)(ii) on the date of entry into force of this Agreement; or
- (c) the continuation or prompt renewal of any non-conforming measure referred to in subparagraphs (a) and (b).

2. Articles 8.10 through 8.12 shall not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors or activities set out in Section B of its Schedule of Non-Conforming Measures in Annex III.

3. Schedules of Non-Conforming Measures are annexed to this Agreement as Annex III and shall form an integral part thereof.

### **ARTICLE 8.10: NATIONAL TREATMENT**

1. For a Party making commitments in accordance with this Section, it shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords to its own like services and service suppliers.<sup>6</sup>

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<sup>6</sup> Nothing in this Article shall be construed to require the Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

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 8.11: MARKET ACCESS

For a Party making commitments in accordance with this Section,<sup>7</sup> with respect to market access through the modes of supply identified in Article 8.2(x), it shall not adopt or maintain, either on the basis of a regional subdivision or on the basis of its entire territory, measures that 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 requirements 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 requirements of an economic needs test;<sup>8</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 requirements 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

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<sup>7</sup> Where a Party undertakes a market access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (x)(i) of Article 8.2, and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (x)(iii) of Article 8.2, it is thereby committed to allow related transfers of capital into its territory.

<sup>8</sup> This subparagraph shall not apply to measures of a Party which limit inputs for the supply of services.

- (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 8.12: MOST-FAVoured-NATION TREATMENT

1. For a Party making commitments in accordance with this Section, it shall, unless otherwise indicated in its Schedule of Non-Conforming Measures in Annex III, accord to services and service suppliers of the other Party treatment no less favourable than it accords to like services and service suppliers of any non-party.
2. Notwithstanding paragraph 1, a Party may adopt or maintain any measure that accords differential treatment to any non-party in accordance with any free trade agreement or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.
3. For greater certainty, paragraph 2 includes, in respect of agreements on the liberalisation of trade in goods or services or investment, any measures taken as part of a wider process of economic integration or trade liberalisation.
4. For those sectors exempted from the operation of paragraph 1 by a Party's Schedule of Non-Conforming Measures in Annex III and where, after this Agreement enters into force, that Party subsequently enters into any agreement with a non-party in which it provides treatment to services or service suppliers of that non-party more favourable than it accords to like services or service suppliers of the other Party, the other Party may request consultations to discuss the possibility of extending, under this Agreement, treatment no less favourable than that provided under the agreement with the non-party. In such circumstances, the Parties shall enter into consultations bearing in mind the overall balance of benefits.
5. The provisions of this Agreement shall not be construed as to prevent a Party from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.

#### PART III: OTHER PROVISIONS

#### ARTICLE 8.13: 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 Agreement has been made, the competent authorities of each Party shall:

- (a) 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;
- (b) on request of the applicant, provide without undue delay information concerning the status of the application; and
- (c) if an application is terminated or denied, to the maximum 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. To ensure that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, the Parties shall jointly review the results of the negotiations on disciplines on these measures pursuant to paragraph 4 of Article VI of GATS, with a view to their incorporation into this Agreement. The Parties note that such disciplines aim to ensure that such requirements are, *inter alia*:

- (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 incorporation of the disciplines referred to in paragraph 4, that Party shall not apply licensing and qualification requirements and technical standards that nullify or impair its obligation under this Agreement 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 subparagraph 5(a), account shall be taken of international standards of relevant international organisations applied by that Party.<sup>9</sup>

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. A Party shall, in accordance with its laws and regulations, permit services suppliers of the other Party to use enterprise names under which they trade in the territory of the other Party.

#### ARTICLE 8.14: 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 the requirements of paragraph 4, 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, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licences or certifications granted in the territory of a non-party, nothing in Articles 8.7 or 8.12 shall be construed to require

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<sup>9</sup> The term “relevant international organisations” refers to international bodies whose membership is open to the relevant bodies of the Parties to this Agreement.

the Party to accord such recognition to the education or experience obtained, requirements met, or licences 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 2, whether existing or in the future, shall afford adequate opportunity for the other Party, on request, to negotiate its accession to such an agreement or arrangement or to negotiate comparable ones with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that the education, experience, licences or certifications obtained or requirements met in that other Party's territory should also be recognised.

4. 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.

#### ARTICLE 8.15: QUALIFICATIONS RECOGNITION COOPERATION

1. The Parties agree to encourage, where possible, the relevant bodies in their respective territories responsible for issuance and recognition of professional and vocational qualifications to strengthen cooperation and to explore possibilities for mutual recognition of respective professional and vocational qualifications.

2. Each Party, where possible, will encourage the relevant bodies in its territory to develop, where possible, mutually acceptable standards and criteria for licensing and certification, and to provide recommendations to the Committee on Trade in Services on mutual recognition with respect to service sectors mutually agreed by the Parties, including engineering and Traditional Chinese Medicine.

3. The Parties may discuss, as appropriate, relevant bilateral, plurilateral and multilateral agreements relating to professional and vocational services.

#### ARTICLE 8.16: PAYMENTS AND TRANSFERS

1. Except in the circumstances envisaged in Article 16.6 (Measures to Safeguard the Balance-of-Payments) of Chapter 16 (General Provisions and Exceptions), 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 in accordance with the Articles of Agreement of the International Monetary 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 16.6 (Measures to Safeguard the Balance of Payments) of Chapter 16 (General Provisions and Exceptions), or at the request of the International Monetary Fund.

#### ARTICLE 8.17: DENIAL OF BENEFITS

Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to a service supplier of the other Party if the service supplier is a juridical person:

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

#### ARTICLE 8.18: TRANSPARENCY

1. Each Party shall ensure that:

- (a) regulatory decisions, including the basis for such decisions, are promptly published or otherwise made available to all interested persons; and
- (b) its measures relating to public networks or services are made publicly available, including the requirements, if any, for permits.

2. Each Party shall ensure that, where a licence is required, all measures relating to the licensing of suppliers of public networks or services are made publicly available, including:

- (a) the circumstances in which a licence is required;
- (b) all applicable licencing procedures;
- (c) the period of time normally required to reach a decision concerning a licence application;
- (d) the cost of, or fees for applying for, or obtaining, a licence; and
- (e) the period of validity of a licence.

3. Each Party shall, in accordance with its laws and regulations, ensure that, on request, an applicant receives reasons for the denial of, revocation of, refusal to renew, or the imposition or modification of conditions on, a licence. Each Party shall endeavour to provide, to the extent possible, such information in writing.

## ARTICLE 8.19: TELECOMMUNICATION SERVICES

1. The Annex on Telecommunications of GATS and Reference Paper on Telecommunications shall be incorporated, *mutatis mutandis*, into and form an integral part of this Agreement.
2. Each Party shall ensure that licensing requirements for suppliers of telecommunications networks or services of the other Party are applied in the least trade restrictive manner and are not more burdensome than necessary.
3. Each Party shall facilitate consultation with suppliers of public telecommunications networks or services of the other Party operating in its territory in the development of telecommunications policy, regulations and standards.
4. In accordance with its laws and regulations, each Party shall ensure that suppliers of public telecommunications networks or services of the other Party operating in its territory are provided with adequate advance notice<sup>10</sup> of, and the opportunity to comment on, regulatory decisions of general application that its telecommunications regulatory body proposes.
5. The Parties shall encourage their respective telecommunications service suppliers to cooperate to reduce the wholesale rates for international mobile roaming between the two Parties, with a view to reducing international mobile roaming rates.

## ARTICLE 8.20: COMMITTEE ON TRADE IN SERVICES

1. The Parties hereby establish a Committee on Trade in Services (the “Committee”) that shall meet within two years of the date of entry into force of this Agreement, or as agreed by the Parties, or on the request of the FTA Joint 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 increased services trade between the Parties; 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 sectors may be invited to attend the Committee meetings.

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<sup>10</sup> For greater clarity, the practice of soliciting public opinions before promulgation of regulatory decisions shall be deemed “adequate advance notice”.

## ARTICLE 8.21: CONTACT POINTS

Each Party shall designate one or more contact points to facilitate communications between the Parties on any matter covered by this Chapter, and shall provide details of such contact points to the other Party. The Parties shall notify each other promptly of any amendments to the details of their contact points.

## ARTICLE 8.22: MODIFICATION OF SCHEDULES

1. A Party (referred to in this Article as the “modifying Party”) may modify or withdraw any commitment in its Schedule in Annex III at any time after three years have elapsed from the date on which that commitment entered into force, provided that:

- (a) it notifies the other Party (referred to in this Article as the “affected Party”) of its intention to modify or withdraw a commitment no later than three months before the intended date of implementation of the modification or withdrawal; and
- (b) upon notification of a Party’s intent to make such modification, the Parties shall consult and attempt to reach agreement on the appropriate compensatory adjustment.

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

3. If agreement under paragraph 1(b) is not reached between the modifying Party and the affected Party within three months, the affected Party may refer the matter to an arbitral tribunal in accordance with the procedures set out in Chapter 15 (Dispute Settlement) or, where agreed between the Parties, to an alternative arbitration procedure.

4. The modifying Party may not modify or withdraw its commitment until it has made the compensatory adjustments in conformity with the findings of the arbitral tribunal in accordance with paragraph 3.

5. If the modifying Party implements its proposed modification or withdrawal and does not comply with the findings of the arbitral tribunal, the affected Party may modify or withdraw substantially equivalent benefits in conformity with the findings of the arbitral tribunal.

## ARTICLE 8.23: MONOPOLIES AND EXCLUSIVE SERVICE SUPPLIERS

1. Each Party shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that Party's obligations under its Schedule in Annex III.

2. Where a Party's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that Party's specific commitments in its Schedule in Annex III, the Party shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.

3. If a Party has reason to believe that a monopoly supplier of a service of the other Party is acting in a manner inconsistent with paragraph 1 or 2, that Party may request the other Party establishing, maintaining or authorising such supplier to provide specific information concerning the relevant operations.

4. If, after the date of entry into force of this Agreement, a Party grants monopoly rights regarding the supply of a service covered by its specific commitments in its Schedule in Annex III, that Party shall notify the other Party no later than three months before the intended implementation of the grant of monopoly rights, and paragraphs 1(b) and 2 of Article 8.22 shall apply.

5. This Article shall also apply to cases of exclusive service suppliers, where a Party, formally or in effect,

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

#### ARTICLE 8.24: REVIEW

1. The Parties shall consult within two years of the date of entry into force of this Agreement and every two years thereafter, or as otherwise agreed, to review the implementation of this Chapter and consider other trade in services issues of mutual interest, with a view to the progressive liberalisation of the trade in services between them on a mutually advantageous basis.

2. Where a Party unilaterally liberalises a measure affecting market access of a service supplier or suppliers of the other Party, the other Party may request consultations to discuss the measure. Following such consultations, if the Parties agree to incorporate the liberalised measure into the Agreement as a new commitment, the relevant Schedule in Annex III shall be amended.

3. After the entry into force of this agreement, at a time to be mutually agreed by the Parties, the Parties shall initiate next round of the negotiation on trade in services in the form of negative listing approach, and conclude such negotiation as soon as they could.

## ARTICLE 8.25: COOPERATION

### *Bilateral Taxation Arrangements*

1. The Parties shall review their bilateral taxation arrangements,<sup>11</sup> having regard to mutual economic objectives and international taxation standards.

### *Traditional Chinese Medicine Services (“TCM”)*

2. Within the relevant committees to be established in accordance with this Agreement, and subject to available resources, Australia and China shall cooperate on matters relating to trade in TCM services.

3. Cooperation identified in paragraph 2 shall:

- (a) include exchanging information, where appropriate, and discussing policies, regulations and actions related to TCM services; and
- (b) encourage future collaboration between regulators, registration authorities and relevant professional bodies of the Parties to facilitate trade in TCM and complementary medicines, in a manner consistent with all relevant regulatory frameworks. Such collaboration, involving the competent authorities of both Parties – for Australia, notably the Department of Health, and for China the State Administration of Traditional Chinese Medicine – will foster concrete cooperation and exchanges relating to TCM.

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<sup>11</sup> These arrangements include the *Agreement between the Government of the People's Republic of China and the Government of Australia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income*, done at Canberra on 17 November 1988.

**ANNEX 8-A**  
**SECTOR COVERAGE UNDER ARTICLE 8.7**

<b>Sector</b>	<b>Conditions/Qualification</b>
Environmental services (CPC 9401-9406, 9409)	
Construction and related engineering services (CPC 512, 514, 516 and 517)	
Services incidental to forestry (CPC 8814)	The commitment is limited to preferential treatment accorded to members of the Organization for Economic Cooperation and Development (“OECD”)
Engineering services (CPC 8672)	
Integrated engineering services (CPC 8673)	
Computer and related services (CPC 841, 842, 843, 844, 845 and 849)	
Tourism and travel related services (CPC 641, 642, 643, 7471 and 7472)	
Related scientific and technical consulting services (CPC 8675, excluding the services related to national security)	
Securities services	
Education services (excluding national compulsory education and special education services e.g. military, police, political and party school education)	

## **ANNEX 8-B** **FINANCIAL SERVICES**

### **ARTICLE 1: SCOPE**

1. This Annex provides for measures additional to Chapter 8 (Trade in Services) in relation to financial services.
2. This Annex applies to measures affecting the supply of financial services. Reference to the supply of a financial service in this Annex shall mean the supply of a financial service:
  - (a) from the territory of a Party into the territory of the other Party;
  - (b) in the territory of a Party to the service consumer of the other Party;
  - (c) by a service supplier of a Party, through commercial presence in the territory of the other Party; or
  - (d) by a service supplier of a Party, through presence of natural persons of that Party in the territory of the other Party.

### **ARTICLE 2: DEFINITIONS**

1. For the purposes of this Annex, “services supplied in the exercise of governmental authority” as referred to in Chapter 8 (Trade in Services) of this Agreement means the following:
  - (a) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;
  - (b) activities forming part of a statutory system of social security or public retirement plans; or
  - (c) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the government,

except where a Party allows the activities referred to in paragraph 1(b) or paragraph 1(c) to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier.

2. The definition of “service supplied in the exercise of governmental authority” in Article 8.2 (Definitions) of Chapter 8 (Trade in Services) shall not apply to services covered by this Annex.

3. For the purposes of this Annex:

- (a) **financial service** is any service of a financial nature offered by a financial service supplier of a Party. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance). Financial services include the following activities:

*Insurance and insurance-related services*

- (i) direct insurance (including co-insurance):
  - (A) life; and
  - (B) non-life;
- (ii) reinsurance and retrocession;
- (iii) insurance intermediation, such as brokerage and agency;
- (iv) services auxiliary to insurance, such as consultancy, actuarial, risk assessment, actuarial and claim settlement services;

*Banking and other financial services (excluding insurance)*

- (v) acceptance of deposits and other repayable funds from the public;
- (vi) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;
- (vii) financial leasing;
- (viii) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;
- (ix) guarantees and commitments;
- (x) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market, or otherwise, the following:
  - (A) money market instruments (including cheques, bills, certificates of deposits);
  - (B) foreign exchange;

- (C) derivative products including, but not limited to, futures and options;
  - (D) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
  - (E) transferable securities; and
  - (F) other negotiable instruments and financial assets, including bullion;
- (xi) participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
  - (xii) money broking;
  - (xiii) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
  - (xiv) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
  - (xv) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and
  - (xvi) advisory, intermediation and other auxiliary financial services on all the activities listed in paragraphs 3(a)(v) through 3(a)(xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;
- (b) **financial service supplier** means any natural or juridical person of a Party wishing to supply or supplying financial services but does not include a public entity; and
- (c) **public entity** means:
- (i) a government, a central bank or a monetary authority of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or

- (ii) a private entity performing functions normally performed by a central bank or monetary authority, when exercising those functions.

### ARTICLE 3: DOMESTIC REGULATION

1. Notwithstanding any other provisions of this Chapter, a Party shall not be prevented from adopting or maintaining reasonable measures for prudential reasons, including for:

- (a) the protection of investors, depositors, policy-holders, policy-claimants, persons to whom a fiduciary duty is owed by a financial service supplier, or any similar financial market participants; or
- (b) ensuring the integrity and stability of that Party's financial system.

2. Where such measures do not conform with the provisions of this Chapter, they shall not be used as a means of avoiding that Party's commitments or obligations under this Chapter. Such measures shall not constitute a disguised restriction on trade in services and shall not discriminate against financial services or financial service suppliers of the other Party in comparison to the Party's own like financial services or like financial service suppliers.

3. Nothing in this Chapter shall be construed to require a Party to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

### ARTICLE 4: RECOGNITION

1. A Party may recognise prudential measures of the other Party, or a non-party, in determining how the Party's measures relating to financial services shall be applied. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with an international standard-setting body, the other Party, or a non-party concerned, or may be accorded autonomously.

2. A Party that is a party to such an agreement or arrangement referred to in paragraph 1, whether future or existing, shall afford adequate opportunity for the other Party to negotiate its accession to such agreements or arrangements, or to negotiate comparable ones with it, under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation, and, if appropriate, procedures concerning the sharing of information between the parties to the agreement or arrangement.

3. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that such circumstances as referred to in paragraph 2 exist.

## ARTICLE 5: REGULATORY TRANSPARENCY

1. The Parties recognise that transparent measures governing the activities of financial institutions and cross-border financial service suppliers are important in facilitating their ability to gain access to and operate in each other's market.
2. Each Party shall ensure that measures of general application adopted or maintained by a Party are promptly published or otherwise made publicly available.
3. Each Party shall take such reasonable measures as may be available to it to ensure that the rules of general application adopted or maintained by self-regulatory organisations<sup>12</sup> of the Party are promptly published or otherwise made publicly available.
4. Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons<sup>13</sup> of the other Party regarding measures of general application to which this Annex applies.
5. Each Party's regulatory authorities shall make publicly available their requirements, including any documentation required, for completing applications relating to the supply of financial services.
6. Each Party's regulatory authorities shall make administrative decisions on a completed application of a financial service supplier of the other Party seeking to supply a financial service in that Party's territory within 180 days and shall notify the applicant of the decision where possible in writing, without undue delay:
  - (a) an application shall not be considered complete until all relevant proceedings are conducted and the regulatory authorities consider all necessary information has been received; and
  - (b) where it is not practicable for a decision to be made within 180 days, the regulatory authority shall notify the applicant without delay and shall endeavour to make the decision within a reasonable time thereafter.

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<sup>12</sup> In the case of Australia, “self-regulatory organisation” means any non-governmental body, including any securities or futures exchange or market, clearing or payment settlement agency, or other organisation or association that exercises its own or delegated regulatory or supervisory authority over financial service suppliers or financial institutions; and in the case of China, means an organisation recognised as a self-regulatory body by the central government according to China’s laws and regulations.

<sup>13</sup> The Parties confirm their shared understanding that “interested persons” in this Article should only be persons whose direct financial interest could potentially be affected by the adoption of the regulations of general application.

7. On the written request of an unsuccessful applicant, a regulatory authority that has denied an application shall endeavour to inform the applicant of the reasons for denial of the application in writing.

#### ARTICLE 6: DISPUTE SETTLEMENT

Arbitrators on an arbitral tribunal established in accordance with Chapter 15 (Dispute Settlement) for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service under dispute.

#### ARTICLE 7: COMMITTEE ON FINANCIAL SERVICES

1. The Parties hereby establish a Committee on Financial Services (hereinafter referred to as the “Committee”).

2. The Committee shall comprise officials of each Party from authorities responsible for financial services. The authorities responsible for financial services are:

- (a) for Australia, the Treasury and the Department of Foreign Affairs and Trade and, as necessary, officials from the relevant regulatory authorities including the Australian Prudential Regulation Authority, Reserve Bank of Australia and Australian Securities and Investment Commission; and
- (b) for China, the Ministry of Commerce and, as necessary, officials from the relevant regulatory authorities, including the People’s Bank of China, China Banking Regulatory Commission, China Securities Regulatory Commission, China Insurance Regulatory Commission and the State Administration of Foreign Exchange.

3. The Committee shall:

- (a) supervise the implementation of this Annex and its further elaboration; and
- (b) consider issues regarding financial services that are referred to it by a Party, including ways for the Parties to incorporate into this Agreement development in their markets for financial services and to cooperate more effectively in the financial services sector.

4. The Committee shall meet every two years, or as otherwise agreed, to assess the functioning of this Agreement as it applies to financial services.

#### ARTICLE 8: CONSULTATIONS

A Party may request consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request.