

**THE SUPPLEMENTARY AGREEMENT ON TRADE IN SERVICES
OF THE FREE TRADE AGREEMENT**

BETWEEN

THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA

AND

THE GOVERNMENT OF THE REPUBLIC OF CHILE

The Government of the People's Republic of China ("China") and the Government of the Republic of Chile ("Chile"), hereinafter referred to as "the Parties",

Recalling Article 120 of the Free Trade Agreement between the Government of the People's Republic of China and the Government of the Republic of Chile on conclusion of the negotiations on trade in services;

Striving to facilitate expansion of trade in services on a mutually advantageous basis, under conditions of transparency and progressive liberalisation, while recognising the rights of the Parties to regulate services;

Agree as follows:

Article 1 Scope and Coverage

1. This Supplementary Agreement applies to measures adopted or maintained by a Party affecting trade in services, including those related to:

- (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 services, in connection with the supply of a service, which are required by the Parties to be offered to the public generally; and
- (d) the presence in its territory of a service supplier of the other Party.

2. This Supplementary Agreement does not apply to:

- (a) financial services;
- (b) government procurement;
- (c) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance;
- (d) national maritime cabotage; or
- (e) air services, including domestic and international air transportation services, whether scheduled or non-scheduled, and related services in support of air services, other than:
 - (i) specialty air services;
 - (ii) aircraft repair and maintenance services during which an aircraft is withdrawn from service;
 - (iii) the selling and marketing of air transport services;
 - (iv) computer reservation system (CRS) services;
 - (v) airport operation services; and
 - (vi) ground handling services.

3. For the purposes of this Supplementary Agreement:

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

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.

4. This Supplementary Agreement does not apply to services supplied in the exercise of governmental authority.

Article 2 National Treatment

1. In the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of the other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.¹
2. A Party may meet the requirement of paragraph 1 by according to services and service suppliers of the other Party, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.
3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of one Party compared to like services or service suppliers of the other Party.

Article 3 Market Access

1. With respect to market access through the modes of supply identified in paragraph 3 of Article 1, each Party shall accord services and service suppliers of the other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule referred to in Article 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;

¹ Specific commitments assumed under this Article shall not be construed to require any Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

- (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;²
- (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 a requirement of an economic needs test;
- (e) measures which restrict or require specific types of legal entities or joint ventures 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 4 Schedules of Specific Commitments

1. The specific commitments undertaken by each Party under Articles 2 (National Treatment) and 3 (Market Access) are set out in the schedule included in Annex II. With respect to sectors where such commitments are undertaken, each Schedule specifies:

- (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 5; 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 Articles 2 (National Treatment) and 3 (Market Access) are inscribed in the column relating to Article 3 (Market Access). In this case the inscription is considered to provide a condition or qualification to Article 2 (National Treatment) as well.

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

3. The Parties agree to incorporate their current schedules of specific commitments under the GATS to this Supplementary Agreement, except for financial services.

Article 5 Additional Commitments

Where a Party undertakes specific commitments on measures affecting trade in services not subject to scheduling under Articles 2 (National Treatment) and 3 (Market Access), such commitments are inscribed in its Schedule as additional commitments.

Article 6 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. 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, the Parties shall aim to ensure that such measures 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;
- (c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

3. The disciplines of paragraph 1 and paragraph 2 may be reviewed, in order to take into account the disciplines agreed under Article VI of the GATS, with a view to their incorporation into this Supplementary Agreement.

4. Where authorization is required for the supply of a service on which a specific commitment has been made, the competent authorities of a 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.

5. The Parties shall consult periodically with a view to determining the feasibility of removing any remaining citizenship or permanent residency requirement for the licensing or certification of each other's service suppliers.

Article 7 Recognition

1. For the purposes of fulfilment of their respective standards or criteria for the authorization, licensing or certification of service suppliers, a Party may recognise the education or experience obtained, requirements met, or licenses 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 the relevant competent bodies or may be accorded autonomously.

2. The Parties may enter into, or encourage their relevant competent bodies to enter into, negotiations on recognition of qualification requirements, qualification procedures, licensing and/or registration procedures for the purposes of fulfilment of their respective standards or criteria for the authorization, licensing or certification of service suppliers.

3. A Party that has an agreement or arrangement of mutual recognition with a non-Party, whether existing or future, shall afford adequate opportunity for the other Party to negotiate its accession to such an agreement or arrangement or to negotiate comparable one with it. Where a Party accords recognition autonomously to the non-Party, it shall afford adequate opportunity for the other Party to demonstrate that education, experience, licenses, or certifications obtained or requirements met in that other Party's territory should be recognised.

4. A Party shall not accord recognition in a manner which would constitute a means of discrimination between the other Party and a non-Party 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.

Article 8 Transparency

1. For the purposes of this Supplementary Agreement, the rights, obligations and exceptions of Chapter IX of the Agreement are incorporated into and shall form part of this Supplementary Agreement, *mutatis mutandis*.

2. Further to paragraph 1:

- (a) each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding its laws and regulations relating to the subject matter of this Supplementary Agreement;³
- (b) at the time it adopts final laws and regulations relating to the subject matter of this Supplementary Agreement, 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 9 Review

Three years after the entry into force of this Supplementary Agreement and in pursuit of the objectives and purposes of this Supplementary Agreement, the Commission may review this Supplementary Agreement, taking into account the developments, laws and regulations on trade in services of the Parties as well as the progress made at the World Trade Organization and other international organizations of which both Parties are members.

Article 10 Denial of Benefits

1. A Party may deny the benefits of this Supplementary Agreement 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.

³ The implementation of its obligation to establish appropriate mechanisms for small administrative agencies may need to take into account resource and budget constraints.

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 11 Dispute Settlement

Except as otherwise provided under this Supplementary Agreement, the Chapter X of the Agreement shall apply to this Supplementary Agreement.

Article 12 Taxation Measures

1. For the purposes of this Article:

tax convention means a convention for the avoidance of double taxation or other international taxation agreement or arrangement in force between the Parties.

2. Nothing in this Supplementary Agreement shall affect the rights and obligations of the Parties under any tax convention in force between the Parties. In the event of any inconsistency relating to a taxation measure between this Supplementary Agreement and such tax convention, the latter shall prevail to the extent of the inconsistency. In the case of a tax convention between the Parties, the competent authorities under that convention shall have sole responsibility for determining whether any inconsistency exists between this Supplementary Agreement and that convention.

Article 13 General Exceptions

Except for subparagraph (e) of Article XIV of the GATS, Article XIV of the GATS is incorporated into and made part of this Supplementary Agreement, *mutatis mutandis*.

Article 14 Security Exceptions

Except for paragraph 2 of Article XIV *bis* of the GATS, Article XIV *bis* of the GATS is incorporated into and made part of this Supplementary Agreement, *mutatis mutandis*.

Article 15 Restrictions to Safeguard the Balance of Payments

Where the Party is in serious balance of payments and external financial difficulties or threat thereof, it may, in accordance with the WTO Agreement and consistent with the

Articles of Agreement of the International Monetary Fund, adopt measures deemed necessary.

Article 16 Committee on Trade in Services

1. The Parties hereby establish a Committee on Trade in Services under the Commission, comprising representatives of each Party.
2. The Committee shall meet on the request of either Party or the Commission to consider any matter arising under this Supplementary Agreement.
3. The Committee's functions shall include:
 - (a) promoting trade in services between the Parties; and
 - (b) addressing barriers to trade in services between the Parties, and, if appropriate, referring such matters to the Commission for its consideration.

Article 17 Definitions

For the purposes of this Supplementary Agreement:

a juridical person is: (i) "owned" by persons of a Party if more than 50 percent of the equity in it is beneficially owned by persons of that Party; (ii) "**controlled**" by persons of a Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;

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

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

airport operation services mean passenger air terminal services and ground services on air fields, including runway operating services, on a fee or contract bases covered under CPC 7461, excluding airport security services and services covered in ground handling services;

commercial presence means any type of business or professional establishment, including, *inter alia*, through the constitution, acquisition or maintenance of a juridical

person, as well as branches or representative offices within the territory of a Party for the purpose of supplying a service;

Commission means the Free Trade Commission established under Article 97 of the Agreement;

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 (part of CPC 7523);

financial service means 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:

1. Insurance and insurance-related services
 - (a) Direct insurance (including co-insurance):
 - (i) life
 - (ii) non-life
 - (b) Reinsurance and retrocession;
 - (c) Insurance intermediation, such as brokerage and agency;
 - (d) Services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.
2. Banking and other financial services (excluding insurance)
 - (e) Acceptance of deposits and other repayable funds from the public;
 - (f) Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;
 - (g) Financial leasing;
 - (h) All payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;

- (i) Guarantees and commitments;
- (j) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
 - (i) money market instruments (including cheques, bills, certificates of deposits);
 - (ii) foreign exchange;
 - (iii) derivative products including, but not limited to, futures and options;
 - (iv) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
 - (v) transferable securities;
 - (vi) other negotiable instruments and financial assets, including bullion.
- (k) 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;
- (l) Money broking;
- (m) Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
- (n) Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
- (o) Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;
- (p) Advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (e) through (o), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;

GATS means General Agreement on Trade in Services which is part of the WTO Agreement;

ground handling services mean services of ULD (unit load devise) Control, Passengers and Baggage and Cargo and Mail, Ramp, Aircraft Servicing (part of Annex A of Standard Ground Handling Agreement (SGHA) (IATA 1998 version),excluding self-handling by designated air carriers by bilateral air services agreements (ASAs);

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

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;

person means a natural or a juridical person;

selling and marketing of air transport services has the same meaning as such term is defined in paragraph 6(b) of the GATS Annex on Air Transport Services, including all aspects of marketing as market research, advertising and distribution;

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

service supplier means any person that supplies a service;

specialty air services mean 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;

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

the Agreement means the Free Trade Agreement between the Government of the People's Republic of China and the Government of the Republic of Chile signed in Pusan, Korea on November 18, 2005; and

WTO Agreement means the Marrakesh Agreement Establishing the World Trade Organization, done on April 15, 1994.

Article 18 Future Work

In accordance with Article 120 of the Agreement the Parties shall commence negotiations on investment on a mutually advantageous basis in due course.

Article 19 Annexes and Footnotes

The Annexes and footnotes to this Supplementary Agreement constitute an integral part of this Supplementary Agreement.

Article 20 Amendments

1. The Parties may agree on any modification of or addition to this Supplementary Agreement.
2. When so agreed, and entered into force according to Article 21, any modification or addition shall constitute an integral part of this Supplementary Agreement.
3. If any provision of the Agreement that the Parties have incorporated into this Supplementary Agreement is amended, the Parties shall consult on whether to amend this Supplementary Agreement.

Article 21 Entry into Force and Termination

1. The entry into force of this Supplementary Agreement is subject to the completion of necessary domestic legal procedures by each Party.
2. This Supplementary Agreement shall enter into force 60 days after the date on which the Parties exchange written notification that such procedures have been completed, or after such other period as the Parties may agree.
3. Either Party may terminate this Supplementary Agreement by written notification to the other Party. This Supplementary Agreement shall expire 180 days after the date of such notification.

Article 22 Authentic Texts

This Supplementary Agreement shall be done in Chinese, Spanish and English. The three texts of this Supplementary Agreement are equally authentic. In the event of divergence, the English text shall prevail.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Supplementary Agreement.

DONE at Sanya, Hainan Province, China, in duplicate, this thirteenth day of April two thousand and eight.

**FOR THE GOVERNMENT OF THE
PEOPLE S REPUBLIC OF CHINA**

**FOR THE GOVERNMENT OF THE
REPUBLIC OF CHILE**

Annex I Temporary Movement of Business Persons

1. General Principles

- (a) This Annex reflects the preferential trading relationship between the Parties, the mutual desire of the Parties to facilitate temporary entry of business persons under the list of Schedules of Specific Commitments, mode 4, and of establishing transparent criteria and procedures for temporary entry, the need to ensure border security and to protect the domestic labor force and permanent employment in their respective territories;
- (b) This Annex does not apply to measures regarding citizenship, nationality, permanent residence, or employment on a permanent basis.

2. Grant of Temporary Entry

Each Party shall grant temporary entry to business persons who are otherwise qualified for entry under applicable measures relating to public health and safety and national security, in accordance with this Annex.

3. Immigration Measures

This Annex shall not prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to a Party under the terms of a specific commitment.⁴

4. Transparency

Each Party shall:

- (a) no later than six months after the date of entry into force of this Supplementary Agreement, publish explanatory material regarding the

⁴ The sole fact of requiring a visa shall not be regarded as nullifying or impairing benefits under a specific commitment.

requirements for temporary entry under this Annex, or otherwise make it publicly available in its own territory so as to enable interested persons of the other Party to become acquainted with them; and

- (b) establish or maintain appropriate mechanisms to respond to inquiries from interested persons regarding laws and regulations relating to the temporary entry of business persons covered by this Annex.

5. Dispute Settlement

For the purposes of this Annex:

- (a) In case of controversy, only Article 83 (Commission – Good Offices, Conciliation, and Mediation) of Chapter X (Dispute Settlement) of the Agreement applies only if:
 - (i) the matter involves a pattern of practice; and
 - (ii) the business person has exhausted the available administrative remedies regarding the particular matter.
- (b) The remedies referred to in paragraph (a) (ii) shall be deemed to be exhausted if a final determination in the matter has not been issued by the competent authority within one year of the institution of an administrative proceeding, and the failure to issue a determination is not attributable to delay caused by the business person.

6. Working Group

- (a) The Parties hereby establish a Working Group on temporary entry of business persons under the Committee on Trade in Services comprising representatives of each Party.
- (b) The main functions of the Working Group shall be the facilitation and simplification of visa issues for temporary entry for business persons.
- (c) The Working Group shall meet once a year or otherwise agreed by the Parties.

7. Definitions

For the purposes of this Annex:

business person means a natural person of a Party who is engaged in trade in goods, trade in services, or investment activities; and

temporary entry means entry into the territory of a Party by a business person of the other Party without the intent to establish permanent residence.