

## CHAPTER 8

### TRADE IN SERVICES

#### **Article 8.1: 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repair and maintenance services** means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and does not include so-called line maintenance;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) **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;
- (c) **computer reservation system services** means 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;
- (d) **juridical person** means any entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or government-owned, including any corporation, trust, partnership, joint venture, sole proprietorship, or association;
- (e) **juridical person of a Party** means a juridical person which is either:
  - (i) constituted or otherwise organised under the law of that Party, and is engaged in substantive business operations in the territory of that Party or any other 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 (e)(i);
- (f) For Thailand and Viet Nam, a juridical person is:
  - (i) **owned** by persons of a Party if more than 50 per cent of the equity interest in it is beneficially owned by persons of that Party;
  - (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;
  - (iii) **affiliated** with another person when it controls, or is controlled by, that other person, or when it and the other person are both controlled by the same person;
- (g) **measures by a Party affecting trade in services** includes measures in respect of:
  - (i) the purchase or use of, or payment for, a service;
  - (ii) 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
  - (iii) the presence, including commercial presence, of persons of a Party for the supply of a service in the territory of another Party;
- (h) **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;
- (i) **natural person of a Party** means a natural person who resides in the territory of that Party or elsewhere and who under the law of that Party:

- (i) is a national of that Party; or
  - (ii) has the right of permanent residence<sup>1</sup> in that Party, in the case of a Party which accords substantially the same treatment to its permanent residents as it does to its nationals in respect of measures affecting trade in services, provided no Party is obligated to accord to such permanent residents treatment more favourable than would be accorded by that Party to such permanent residents;
- (j) **sector** of a service means:
- (i) with reference to a commitment, one or more, or all, subsectors of that service, as specified in a Party's Schedule in Annex II (Schedules of Specific Commitments for Services) or Schedule in Annex III (Schedules of Reservations and Non-Conforming Measures for Services and Investment); and
  - (ii) otherwise, the whole of that service sector, including all of its subsectors;
- (k) **selling and marketing of air transport services** means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising, and distribution. These activities do not include the pricing of air transport services nor the applicable conditions;
- (l) **services** includes any service in any sector except services supplied in the exercise of governmental authority;
- (m) **service consumer** means any person that receives or uses a service;

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<sup>1</sup> Where a Party has made a reservation with respect to permanent residents in its Schedules in Annex II (Schedules of Specific Commitments for Services), Annex III (Schedules of Reservations and Non-Conforming Measures for Services and Investment), or Annex IV (Schedules of Specific Commitments on Temporary Movement of Natural Persons), that reservation shall not prejudice that Party's rights and obligations in GATS.

- (n) **service of another Party** means a service which is supplied:
- (i) from or in the territory of that other Party, or in the case of maritime transport, by a vessel registered under the laws and regulations of that other Party, or by a person of that other Party which supplies the service through the operation of a vessel or its use in whole or in part; or
  - (ii) in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of that other Party;
- (o) **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;
- (p) **service supplier** means a person that supplies a service:<sup>2, 3</sup>
- (q) **supply of a service** includes the production, distribution, marketing, sale, and delivery of a service;
- (r) **trade in services** means the supply of a service:
- (i) from the territory of one Party into the territory of any other Party;
  - (ii) in the territory of one Party to the service consumer of any other Party;

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<sup>2</sup> Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under this Agreement. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the territory where the service is supplied.

<sup>3</sup> The Parties confirm their shared understanding that “service supplier” in this Chapter has the same meaning that it has under subparagraph (g) of Article XXVIII of GATS.

- (iii) by a service supplier of one Party, through commercial presence in the territory of any other Party;
  - (iv) by a service supplier of one Party, through presence of natural persons of a Party in the territory of any other Party; and
- (s) **traffic rights** means the rights for scheduled and non-scheduled services to operate or carry passengers, cargo, and mail for remuneration or hire from, to, within, or over the territory of a Party, including points to be served, routes to be operated, types of traffic to be carried, capacity to be provided, tariffs to be charged, and their conditions, and criteria for designation of airlines, including such criteria as number, ownership, and control.

## Article 8.2: Scope

1. This Chapter shall apply to measures by a Party affecting trade in services.
2. For the purposes of this Chapter, “measures by a Party” means measures taken by:
  - (a) central, regional, or local governments and authorities of that Party; and
  - (b) non-governmental bodies in the exercise of powers delegated by central, regional, or local governments or authorities of that Party.

In fulfilling its obligations and commitments under this Chapter, each Party shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities and non-governmental bodies within its territory.

3. This Chapter shall not apply to:
  - (a) government procurement;
  - (b) subsidies or grants, including government-supported loans, guarantees, and insurance, provided by a Party or to any conditions attached to the receipt or continued

- receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to domestic services, service consumers, or service suppliers;
- (c) services supplied in the exercise of governmental authority;
  - (d) cabotage in maritime transport services; and
  - (e) air transport services, measures affecting traffic rights however granted, or measures affecting services directly related to the exercise of traffic rights, other than measures affecting:<sup>4</sup>
    - (i) aircraft repair and maintenance services;
    - (ii) the selling and marketing of air transport services;
    - (iii) computer reservation system services;
    - (iv) specialty air services;
    - (v) ground handling services; and
    - (vi) airport operation services.
4. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding nationality, citizenship, residence or employment on a permanent basis.
  5. For greater certainty, Annex 8A (Financial Services), Annex 8B (Telecommunications Services), and Annex 8C (Professional Services) are an integral part of this Chapter.

### **Article 8.3: Scheduling of Commitments**

1. Each Party shall make commitments under Article 8.4 (National Treatment) and Article 8.5 (Market Access) in accordance with

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<sup>4</sup> Notwithstanding subparagraphs (iv) through (vi), this Chapter shall apply to measures affecting specialty air services, ground handling services, and airport operation services only for a Party that opts to make commitments in relation to such services in accordance with Article 8.3 (Scheduling of Commitments).

- either Article 8.7 (Schedules of Specific Commitments) or Article 8.8 (Schedules of Non-Conforming Measures).
2. A Party making commitments in accordance with Article 8.7 (Schedules of Specific Commitments) shall make commitments under the applicable paragraphs in Article 8.4 (National Treatment) and Article 8.5 (Market Access), and shall also make commitments under either Article 8.6 (Most-Favoured-Nation Treatment) or Article 8.10 (Transparency List). A Party making commitments in accordance with Article 8.7 (Schedules of Specific Commitments) may also make commitments under Article 8.9 (Additional Commitments).
  3. A Party making commitments in accordance with Article 8.8 (Schedules of Non-Conforming Measures) shall make commitments under the applicable paragraphs in Article 8.4 (National Treatment), Article 8.5 (Market Access), Article 8.6 (Most-Favoured-Nation Treatment), and Article 8.11 (Local Presence). A Party making commitments in accordance with Article 8.8 (Schedules of Non-Conforming Measures) may also make commitments under Article 8.9 (Additional Commitments).
  4. Notwithstanding paragraph 2, Least Developed Country Parties which are Member States of ASEAN making commitments in accordance with Article 8.7 (Schedules of Specific Commitments) are not obliged to make commitments under either Article 8.6 (Most-Favoured-Nation Treatment) or Article 8.10 (Transparency List). These Parties may, however, do so on a voluntary basis.

#### **Article 8.4: National Treatment**

1. A Party making commitments in accordance with Article 8.7 (Schedules of Specific Commitments) shall, in the sectors inscribed in its Schedule in Annex II (Schedules of Specific Commitments for Services) and subject to any conditions and qualifications set out therein, accord to services and service suppliers of any 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>5</sup>

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<sup>5</sup> 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.

2. A Party making commitments in accordance with Article 8.8 (Schedules of Non-Conforming Measures) shall accord to services and service suppliers of any 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, subject to its non-conforming measures as provided in Article 8.8 (Schedules of Non-Conforming Measures).<sup>6</sup>
3. A Party may meet the requirement under paragraph 1 or 2 by according to services and service suppliers of any other Party, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.
4. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Party compared to like services or service suppliers of any other Party.

### **Article 8.5: Market Access**

1. With respect to market access through the modes of supply identified in subparagraph (r) of Article 8.1 (Definitions), a Party making commitments in accordance with Article 8.7 (Schedules of Specific Commitments) shall accord services and service suppliers of any other Party treatment no less favourable than that provided for under the terms, limitations, and conditions agreed and specified in its Schedule in Annex II (Schedules of Specific Commitments for Services).<sup>7</sup>
2. The measures which a Party shall not adopt or maintain either on the basis of a regional subdivision or on the basis of its entire territory, either in sectors where market access commitments are undertaken and in accordance with its specific commitments,

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<sup>6</sup> Nothing in this Article shall 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.

<sup>7</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 (r)(i) of Article 8.1 (Definitions) 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 (r)(iii) of Article 8.1 (Definitions), it is thereby committed to allow related transfers of capital into its territory.

as provided in Article 8.7 (Schedules of Specific Commitments), or subject to its non-conforming measures, as provided in the Article 8.8 (Schedules of Non-Confirming Measures), 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>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 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 8.6: Most-Favoured-Nation Treatment**

1. A Party making commitments in accordance with Article 8.7 (Schedules of Specific Commitments) that opts under paragraph 2 of Article 8.3 (Scheduling of Commitments) to make commitments on Most-Favoured-Nation Treatment shall:

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

- (a) in respect of the sectors and subsectors inscribed in its Schedule in Annex II (Schedules of Specific Commitments for Services) that are identified with an “MFN”;
- (b) in respect of the sectors and subsectors set out in its Most-Favoured-Nation Treatment Sectoral Coverage Appendix to its Schedule in Annex II (Schedules of Specific Commitments for Services); or
- (c) in respect of the sectors and subsectors that are not contained in its Most-Favoured-Nation Treatment Sectoral Exemption List Appendix to its Schedule in Annex II (Schedules of Specific Commitments for Services),

and subject to any conditions and qualifications set out therein, accord to services and service suppliers of another Party treatment no less favourable than that it accords to like services and service suppliers of any other Party or of any non-Party.

2. A Party making commitments in accordance with Article 8.8 (Schedules of Non-Conforming Measures) shall, subject to its non-conforming measures set out in its Schedule in Annex III (Schedules of Reservations and Non-Conforming Measures for Services and Investment), accord to services and service suppliers of another Party treatment no less favourable than that it accords to like services and service suppliers of any other Party or of any non-Party.
3. Notwithstanding paragraphs 1 and 2, each Party reserves the right to adopt or maintain any measure that accords differential treatment to services and service suppliers of any other Party or of any non-Party under any bilateral or multilateral international agreement in force at, or signed prior to, the date of entry into force of this Agreement.
4. Notwithstanding paragraphs 1 and 2, each Party which is a Member State of ASEAN reserves the right to adopt or maintain any measure that accords differential treatment to services and service suppliers of any other Party which is a Member State of ASEAN taken under an agreement on the liberalisation of trade in goods or services or investment as part of a wider process of economic integration among the Parties which are Member States of ASEAN.

5. The provisions of this Chapter shall not be construed as to prevent any Party from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.

## **Article 8.7: Schedules of Specific Commitments**

1. A Party making commitments in accordance with this Article shall set out in its Schedule in Annex II (Schedules of Specific Commitments for Services), the specific commitments it undertakes under Article 8.4 (National Treatment), Article 8.5 (Market Access), and Article 8.9 (Additional Commitments). With respect to sectors where such commitments are undertaken, each Schedule in Annex II (Schedules of Specific Commitments for Services) 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 Article 8.4 (National Treatment) and Article 8.5 (Market Access) shall be inscribed in the column relating to Article 8.5 (Market Access). In this case, the inscription shall be considered to provide a condition or qualification to Article 8.4 (National Treatment) as well.
3. Each Party making commitments in accordance with this Article shall identify in its Schedule in Annex II (Schedules of Specific Commitments for Services) sectors or subsectors for future liberalisation with "FL". In these sectors and subsectors, any applicable terms, limitations, conditions, and qualifications, referred to in subparagraphs 1(a) and (b) shall be limited to existing measures of that Party.
4. If a Party amends a measure referred to in paragraph 3 in a manner that reduces or eliminates the inconsistency of that measure with Article 8.4 (National Treatment) or Article 8.5 (Market Access), as it existed immediately before the amendment, that Party shall not subsequently amend that measure in a manner that increases the measure's inconsistency with Article 8.4 (National Treatment) or Article 8.5 (Market Access).
5. Notwithstanding paragraph 3, Least Developed Country Parties which are Member States of ASEAN are not obliged to identify

sectors or subsectors for future liberalisation. These Parties may, however, do so on a voluntary basis.

### **Article 8.8: Schedules of Non-Conforming Measures**

1. For a Party making commitments in accordance with this Article, Article 8.4 (National Treatment), Article 8.5 (Market Access), Article 8.6 (Most-Favoured-Nation Treatment), and Article 8.11 (Local Presence) shall not apply to:
  - (a) any existing non-conforming measure that is maintained by that Party at:
    - (i) the central level of government, as set out by that Party in List A of its Schedule in Annex III (Schedules of Reservations and Non-Conforming Measures for Services and Investment);
    - (ii) a regional level of government, as set out by that Party in List A of its Schedule in Annex III (Schedules of Reservations and Non-Conforming Measures for Services and Investment); or
    - (iii) a local level of government;
  - (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); and
  - (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 8.4 (National Treatment), Article 8.5 (Market Access), Article 8.6 (Most-Favoured-Nation Treatment), or Article 8.11 (Local Presence).
2. Article 8.4 (National Treatment), Article 8.5 (Market Access), Article 8.6 (Most-Favoured-Nation Treatment), and Article 8.11 (Local Presence) shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities set out in List B of its Schedule in Annex III (Schedules of Reservations and Non-Conforming Measures for Services and Investment).

## **Article 8.9: Additional Commitments**

1. The Parties may negotiate commitments with respect to measures affecting trade in services, including those regarding qualifications, standards, or licensing matters, not subject to scheduling, under:
  - (a) Article 8.4 (National Treatment) or Article 8.5 (Market Access) for those Parties making commitments in accordance with Article 8.7 (Schedules of Specific Commitments); or
  - (b) Article 8.4 (National Treatment), Article 8.5 (Market Access), Article 8.6 (Most-Favoured-Nation Treatment), or Article 8.11 (Local Presence) for those Parties making commitments in accordance with Article 8.8 (Schedules of Non-Conforming Measures).
2. A Party making additional commitments under subparagraph 1(a) shall inscribe such commitments in its Schedule in Annex II (Schedules of Specific Commitments for Services).
3. A Party making additional commitments under subparagraph 1(b) shall inscribe such commitments in List C of its Schedule in Annex III (Schedules of Reservations and Non-Conforming Measures for Services and Investment).

## **Article 8.10: Transparency List**

1. A Party making commitments in accordance with Article 8.7 (Schedules of Specific Commitments) that opts under paragraph 2 of Article 8.3 (Scheduling of Commitments) to make commitments under this Article shall prepare, forward to the other Parties, and make publicly available on the internet, a non-binding transparency list of its existing measures maintained at the central government level which are inconsistent with Article 8.4 (National Treatment) or Article 8.5 (Market Access) (hereinafter referred to as "Transparency List" in this Chapter). Such a Transparency List shall cover the sectors in which the Party has undertaken specific commitments in this Chapter.
2. A Party's Transparency List is made solely for the purposes of transparency, and shall be accurate at the time of submission and shall not affect the rights and obligations of that Party under this Chapter. Nothing in this Article shall prevent a Party from

amending its measures referred to in paragraph 1. If there are any discrepancies between a Party's Transparency List and its Schedule in Annex II (Schedules of Specific Commitments for Services), the latter shall prevail.

3. Each Transparency List shall include the following elements:
  - (a) the sector and subsector or activity;
  - (b) the type of inconsistency (National Treatment or Market Access);
  - (c) the legal source or authority of the measure; and
  - (d) a succinct description of the measure.
4. A Party shall update, as necessary, its Transparency List to ensure it is complete and accurate by:
  - (a) adding any new or amended inconsistent measure; or
  - (b) removing any measure that has ceased to exist, or any sector, subsector, or activity for which it no longer maintains an inconsistent measure.
5. No Party shall have recourse to dispute settlement under Chapter 19 (Dispute Settlement) for any dispute or matter of interpretation arising out of a Transparency List.

### **Article 8.11: Local Presence**

A Party making commitments in accordance with Article 8.8 (Schedules of Non-Conforming Measures) shall not require a service supplier of another Party to establish or maintain a representative office, a branch, or any form of juridical person, or to be resident, in its territory as a condition for the supply of a service as described in subparagraph (r)(i), (ii), or (iv) of Article 8.1 (Definitions), subject to its non-conforming measures as provided in Article 8.8 (Schedules of Non-Conforming Measures).

### **Article 8.12: Transition**

1. A Party making commitments in accordance with Article 8.7 (Schedules of Specific Commitments) (hereinafter referred to as

- a “transitioning Party” in this Article) shall submit a proposed Schedule of Non-Conforming Measures (hereinafter referred to as a “Proposed Schedule” in this Article) that accords with Article 8.8 (Schedules of Non-Conforming Measures)<sup>9</sup> to the Committee on Services and Investment for circulation to the other Parties, no later than three years, or for Cambodia, Lao PDR, and Myanmar, no later than 12 years, after the date of entry into force of this Agreement.
2. The commitments contained in each transitioning Party’s Proposed Schedule shall provide an equivalent or a greater level of liberalisation and shall not result in a decrease in the level of commitments as compared to the transitioning Party’s commitments, made in accordance with paragraph 2 of Article 8.3 (Scheduling of Commitments).
  3. The Parties shall consider the Proposed Schedule for the purposes of verification and clarification, and shall have the opportunity to make comments to ensure that the Proposed Schedule meets the requirements specified in paragraph 2. The verification and clarification process shall not entitle the Parties to negotiate specific new commitments.<sup>10</sup> The transitioning Party shall have the opportunity to respond to any comments received and to modify or revise its Proposed Schedule, as may be necessary, with a view to resolving any ambiguities, omissions, or errors in its Proposed Schedule.
  4. Upon completion of the verification and clarification process referred to in paragraph 3, the Committee on Services and Investment may adopt, by consensus, the transitioning Party’s Proposed Schedule, which shall replace the transitioning Party’s Schedule in Annex II (Schedules of Specific Commitments for Services) subject to paragraph 5 (hereinafter referred to as an “Adopted Schedule” in this Article). The transitioning Party shall then submit its Adopted Schedule to the Depositary and notify it

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<sup>9</sup> For the purposes of a Proposed Schedule referred to in this paragraph and an Adopted Schedule referred to in paragraph 4, the references to “existing” in subparagraph 1(a) of Article 8.8 (Schedules of Non-Conforming Measures) shall be deemed to mean “in effect on the date of entry into force of the Party’s Adopted Schedule”.

<sup>10</sup> For greater certainty, nothing in this Article requires a Party to make commitments under Article 8.6 (Most-Favoured-Nation Treatment) in respect of a specific sector or subsector.

in writing of the completion of any applicable domestic processes.<sup>11</sup>

5. Notwithstanding Article 20.4 (Amendments), once a transitioning Party has submitted its Adopted Schedule to the Depositary and notified it in writing of the completion of any applicable domestic processes, the transitioning Party's Adopted Schedule shall enter into force between the transitioning Party and each other Party 60 days after the date of the transitioning Party's notification to the Depositary. However, if a Party notifies the Depositary in writing within 60 days of the date of the transitioning Party's notification to the Depositary that the Adopted Schedule will not enter into force for that Party within 60 days of the transitioning Party's notification to the Depositary, the Adopted Schedule shall enter into force between the transitioning Party and that Party on the date on which that Party notifies the Depositary in writing of the completion of its applicable domestic processes, or on such other date as the transitioning Party and that Party may decide.
6. For greater certainty, a transitioning Party's Schedule in Annex II (Schedules of Specific Commitments for Services) under Article 8.7 (Schedules of Specific Commitments) shall remain in force between the transitioning Party and each other Party until the transitioning Party's Adopted Schedule has entered into force for that other Party.
7. The process referred to in paragraphs 1 through 4 shall be completed no later than six years, or for Cambodia, Lao PDR, and Myanmar, no later than 15 years, after the date of entry into force of this Agreement.

### **Article 8.13: Modification of Schedules**

1. A Party that has made commitments in accordance with Article 8.7 (Schedules of Specific Commitments) (hereinafter referred to as a "modifying Party" in this Article) may modify or withdraw any commitment in its Schedule in Annex II (Schedules of

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<sup>11</sup> For greater certainty, this paragraph does not exclude the possibility of a transitioning Party, when undertaking its applicable domestic processes, requesting consultations among the Parties regarding potential revisions to its Adopted Schedule, and requesting the Committee on Services and Investment to adopt, by consensus, a revised Adopted Schedule for submission by the transitioning Party to the Depositary in accordance with this paragraph.

Specific Commitments for Services), other than commitments in sectors or subsectors indicated with an “FL”, at any time after three years from the date on which that commitment has entered into force, provided that it complies with this Article and that:

- (a) it notifies the Committee on Services and Investment 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) it enters into negotiations with any requesting Party, with a view to reaching agreement on any necessary compensatory adjustment.
2. In achieving a compensatory adjustment through the negotiations referred to in subparagraph 1(b), the Parties concerned shall endeavour to maintain a general level of mutually advantageous commitments no less favourable to trade than that provided for in the modifying Party’s Schedule in Annex II (Schedules of Specific Commitments for Services) prior to such negotiations.
  3. Any compensatory adjustment made pursuant to this Article shall be accorded on a non-discriminatory basis to all Parties.
  4. If the Parties concerned are unable to reach an agreement on the compensatory adjustment within three months following the last date on which a request under subparagraph 1(b) has been made, or another period agreed by the modifying Party and each requesting Party, a requesting Party may refer the matter to arbitration. Any Party that wishes to enforce a right that it may have to compensation must participate in the arbitration. The modifying Party may not modify or withdraw its commitment until it has made compensatory adjustments in conformity with the findings of the arbitration.
  5. Arbitrations undertaken pursuant to paragraph 4 shall be conducted in accordance with the procedures set out in paragraphs 7 through 19 of *Procedures for the Implementation of Article XXI of the General Agreement on Trade in Services adopted on 19 July 1999(S/L/80)*, as may be amended, (hereinafter referred to as “the GATS Article XXI Procedures” in this Chapter), which shall apply *mutatis mutandis*, unless otherwise decided by the Committee on Services and Investment under paragraph 10 or unless the parties to the arbitration agree otherwise.

6. If the modifying Party implements its proposed modification or withdrawal and does not comply with the findings of the arbitration, any Party that participated in the arbitration may modify or withdraw substantially equivalent benefits in conformity with those findings. Such a modification or withdrawal may be implemented solely with respect to the modifying Party.
7. If no Party has requested:
  - (a) negotiations under subparagraph 1(b) within 45 days of the date of a notification made pursuant to subparagraph 1(a); or
  - (b) arbitration pursuant to paragraph 4,

the modifying Party shall be free to implement its proposed modification or withdrawal, notwithstanding Article 20.4 (Amendments), in accordance with the procedures set out in paragraphs 20 through 22 of the GATS Article XXI Procedures, which shall apply *mutatis mutandis*, unless otherwise decided by the Committee on Services and Investment under paragraph 10.
8. For the avoidance of doubt, for the purposes of paragraphs 5 and 7, references in the GATS Article XXI Procedures to:
  - (a) “the Secretariat” and “the Council for Trade in Services” shall be read as references to the Committee on Services and Investment;
  - (b) “Article XXI” shall be read as references to Article 8.13 (Modification of Schedules); and
  - (c) “Members of the WTO” shall be read as references to the Parties.
9. In the event of any inconsistency between this Agreement and the GATS Article XXI Procedures, this Agreement shall prevail to the extent of the inconsistency.
10. The Committee on Services and Investment may establish or amend procedures for the modification or withdrawal of a Party’s commitments in its Schedule in Annex II (Schedules of Specific Commitments for Services) or the conduct of arbitration, under this Article. Any Party that seeks to modify or withdraw its

commitments under this Article shall do so in accordance with any such procedures.

#### **Article 8.14: Transparency**

1. The Parties recognise that transparent measures governing trade in services are important in facilitating the ability of service suppliers to gain access to, and operate in, each other's markets. Each Party shall promote regulatory transparency in trade in services.
2. Each Party shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force:
  - (a) all relevant measures of general application affecting trade in services; and
  - (b) all international agreements pertaining to or affecting trade in services to which a Party is a signatory.
3. To the extent possible, each Party shall make the measures and international agreements referred to in paragraph 2 publicly available on the internet and, to the extent provided under its legal framework, in the English language.
4. Where publication referred to in paragraphs 2 and 3 is not practicable, such information<sup>12</sup> shall be made otherwise publicly available.
5. Each Party shall designate a contact point to facilitate communications among the Parties on any matter covered by this Chapter. On request of another Party, the contact point shall:
  - (a) identify the office or official responsible for the relevant matter; and
  - (b) assist as necessary in facilitating communications with the requesting Party with respect to that matter.
6. Each Party shall respond promptly to any request by any other Party for specific information on:

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<sup>12</sup> For greater certainty, such information may be published in each Party's chosen language.

- (a) any measures referred to in subparagraph 2(a) or international agreements referred to in subparagraph 2(b); and
- (b) any new, or any changes to existing, laws, regulations or administrative guidelines which significantly affect trade in services.

#### **Article 8.15: Domestic Regulation**

1. 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, 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.
3. Nothing in paragraph 2 shall 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.
4. If the results of the negotiations related to paragraph 4 of Article VI of GATS enter into effect, the Parties shall review the results of such negotiations and shall amend this Article as appropriate, after consultation among the Parties to bring the results of such negotiations into effect under this Chapter.
5. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards, and licensing requirements do not constitute unnecessary barriers to trade in services, while recognising the right to regulate and to introduce new regulations on the supply of services in order to meet its policy objectives, each Party shall endeavour to ensure that any such measures that it adopts or maintains are:
  - (a) based on objective and transparent criteria, such as competence and the ability to supply the service;

- (b) not more burdensome than necessary to ensure the quality of the service; and
  - (c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.
6. In determining whether a Party is in conformity with its obligations under subparagraph 5(a), international standards of relevant international organisations<sup>13</sup> applied by that Party shall be taken into account.
7. Where a Party requires authorisation for the supply of a service, it shall ensure that its competent authorities:
- (a) ensure that any authorisation fees charged for the completion of relevant application procedures are reasonable, transparent, and do not in themselves restrict the supply of a service. For the purposes of this subparagraph, authorisation fees do not include fees for the use of natural resources, payment for auction, tendering, or other non-discriminatory means of awarding concessions, or mandated contributions to universal services provision;
  - (b) within a reasonable period of time after the submission of an application considered complete under its laws and regulations, inform the applicant of the decision concerning the application;
  - (c) to the extent practicable, establish an indicative time frame for processing of an application;
  - (d) on request of the applicant, provide, without undue delay, information concerning the status of the application;
  - (e) in the case of an incomplete application and on request of the applicant, identify, where practicable, all the additional information that is required to complete the application, and provide the opportunity to remedy deficiencies within a reasonable time frame;

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<sup>13</sup> "Relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of the Parties.

- (f) if an application is terminated or denied, to the extent possible and without undue delay, inform the applicant in writing of the reasons for such action. The applicant will have the possibility of resubmitting, at its discretion, a new application;
  - (g) to the extent permissible under its laws and regulations, do not require physical presence in the territory of a Party for the submission of an application for a licence or qualification;
  - (h) endeavour to accept applications in electronic format under the equivalent conditions of authenticity as paper submissions, in accordance with its laws and regulations; and
  - (i) where they deem appropriate, accept copies of documents authenticated in accordance with its laws and regulations, in place of original documents.
8. Each Party shall provide adequate procedures to verify the competence of professionals of another Party. If licensing or qualification requirements include the completion of an examination, each Party shall, to the extent practicable, ensure that:
- (a) the examination is scheduled at reasonable intervals; and
  - (b) a reasonable period of time is provided to enable interested persons to submit an application.
9. Each Party shall, subject to its laws and regulations, permit service suppliers of another Party to use, without undue restrictions, the business names under which they trade in the territory of that other Party.
10. Paragraphs 1 through 9 shall not apply to a sector or measure to the extent that such sector or measure is not subject to Article 8.4 (National Treatment) or Article 8.5 (Market Access) by reason of a Party's commitments made in accordance with either Article 8.7 (Schedules of Specific Commitments) or Article 8.8 (Schedules of Non-Conforming Measures).

#### **Article 8.16: 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 the education or experience obtained, requirements met, or licences or certifications granted in a particular country. 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. A Party that is 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 Parties, upon request, to negotiate their 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 any other Party to demonstrate that education, experience, licences, or certifications obtained or requirements met in that other Party's territory should be recognised.
3. Nothing in Article 8.6 (Most-Favoured-Nation Treatment) shall be construed to require any Party to accord such recognition to the education or experience obtained, requirements met, or licences or certifications granted in another Party.
4. A Party shall not accord recognition in a manner which would constitute a means of discrimination between other 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.
5. Where appropriate, recognition should be based on multilaterally agreed criteria. In appropriate cases, Parties shall work in cooperation with relevant inter-governmental and non-governmental organisations towards the establishment and adoption of common international standards and criteria for recognition and common international standards for the practice of relevant services trades and professions.
6. As set out in Annex 8C (Professional Services), each Party shall endeavour to facilitate trade in professional services, including through encouraging relevant bodies in its territory to enter into negotiations for agreements or arrangements on recognition.

#### **Article 8.17: 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 Article 8.4 (National Treatment) and Article 8.5 (Market Access).
2. Where a Party's monopoly supplier of a service 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 commitments, that Party shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.
3. If a Party has a reason to believe that a monopoly supplier of a service of any other Party is acting in a manner inconsistent with paragraph 1 or 2, it may request that other Party establishing, maintaining, or authorising such a supplier to provide specific information concerning the relevant operations.
4. 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 8.18: Business Practices**

1. The Parties recognise that certain business practices of service suppliers, other than those falling under Article 8.17 (Monopolies and Exclusive Service Suppliers), may restrain competition and thereby restrict trade in services.
2. Each Party shall, on request of any other Party, enter into consultations with a view to eliminating practices referred to in paragraph 1. The requested Party shall accord full and sympathetic consideration to such a request and shall cooperate through the supply of publicly available non-confidential information of relevance to the matter in question. The requested Party may also provide other information available to the requesting Party, subject to its laws and regulations and to

the conclusion of a satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Party.

### **Article 8.19: Payments and Transfers**

1. Except under the circumstances envisaged in Article 17.15 (Measures to Safeguard the Balance of Payments), a Party shall not apply restrictions on international transfers or payments for current transactions relating to its commitments.
2. Nothing in this Chapter shall affect the rights and obligations of a Party as a member of the IMF under the IMF Articles of Agreement, as may be amended, including the use of exchange actions which are in conformity with the IMF Articles of Agreement, as may be amended, provided that the Party shall not impose restrictions on any capital transaction inconsistently with its commitments under this Chapter regarding such transactions, except under Article 17.15 (Measures to Safeguard the Balance of Payments) or on request of the IMF.

### **Article 8.20: Denial of Benefits**

1. A Party may deny the benefits of this Chapter:
  - (a) to the supply of any service, if it establishes that the service is supplied from or in the territory of a non-Party;
  - (b) to a service supplier that is a juridical person, if it establishes that it is not a service supplier of another Party;
  - (c) in the case of the supply of a maritime transport service, if it establishes that the service is supplied:
    - (i) by a vessel registered under the laws and regulations of a non-Party; and
    - (ii) by a person of a non-Party which operates or uses the vessel in whole or in part.
2. A Party may deny the benefit of this Chapter to a service supplier of another Party, if the service supplier is a juridical person owned or controlled by persons of a non-Party, and the denying Party adopts or maintains measures with respect to the

non-Party or a person of the non-Party that prohibit transactions with the juridical person or that would be violated or circumvented if the benefits of this Chapter were accorded to the juridical person.

### **Article 8.21: Safeguard Measures**

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

### **Article 8.22: Subsidies**

1. Notwithstanding paragraph 3(b) of Article 8.2 (Scope), the Parties shall review the issue of disciplines on subsidies related to trade in services in light of any disciplines agreed under Article XV of GATS with a view to their incorporation into this Chapter.
2. A Party which considers that it is adversely affected by a subsidy of another Party related to trade in services may request consultations with that other Party on such matters. The requested Party shall accord sympathetic consideration to such a request.
3. No Party shall have recourse to dispute settlement under Chapter 19 (Dispute Settlement) for any request made or consultations held under this Article, or any other dispute arising under this Article.

### **Article 8.23: Increasing Participation of Least Developed Country Parties which are Member States of ASEAN**

To increase the participation of Least Developed Country Parties which are Member States of ASEAN, this Chapter shall facilitate:

- (a) strengthening their domestic services capacity and their efficiency and competitiveness, *inter alia*, through access to technology on a commercial basis;
- (b) improving their access to distribution channels and information networks; and
- (c) the liberalisation of market access in sectors and modes of supply of export interest to them, and the provision of market access in sectors beneficial to them.

#### **Article 8.24: Review of Commitments**

The Parties shall review the commitments on trade in services as necessary, but no later than the general review of this Agreement under Article 20.8 (General Review), with a view to further improving commitments under this Chapter so as to progressively liberalise trade in services among the Parties.

#### **Article 8.25: Cooperation**

The Parties shall strengthen cooperation efforts in sectors, including sectors which are not covered by current cooperation arrangements. The Parties shall discuss and agree on the sectors for cooperation and develop cooperation programmes in these sectors in order to improve their domestic services capacity and their efficiency and competitiveness.