

## **CHAPTER 8 TRADE IN SERVICES**

### Article 8.1: Definitions

For the purposes of this Chapter:

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repair and maintenance services** mean such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance;

**airport operation and management services** means the supply of air terminal, airfield and other airport infrastructure operation services on a fee or contract basis. Airport operation services do not include air navigation services;

**commercial presence** means any type of business or professional establishment, including through:

- (a) the constitution, acquisition or maintenance of a juridical person, or
- (b) the creation or maintenance of a branch or representative office,

within the territory of a Party for the purpose of supplying a service;

**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;

**ground handling services** means the supply at an airport, on a fee or contract basis, of the following airline representation, administration and supervision; passenger handling; baggage handling; ramp services; catering, except the preparation of food; air cargo and mail handling; fuelling of an aircraft; aircraft servicing and cleaning; surface transport; and flight operations, crew administration and flight planning. Ground handling services do not include self-handling; security; line maintenance; aircraft repair and maintenance; or management or operation of essential centralised airport infrastructure, such as de-icing facilities, fuel distribution systems, baggage handling systems and fixed intra-airport transport systems;

**juridical person** means any legal entity duly constituted or otherwise organised under applicable law, whether for profit, including governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association. A juridical person is:

- (a) "owned" by persons of a Party if more than 50 percent of the equity interest in it is beneficially owned by persons of that Party;
- (b) "controlled" by persons of a Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions,
- (c) "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;

**juridical person of the other Party** means a juridical person which is either:

- (a) constituted or otherwise organized under the law of that other Party, and is engaged in substantive business operations in the territory of that Party, or
- (b) in the case of the supply of a service through commercial presence, owned or controlled by:
  - (i) natural persons of that Party, or
  - (ii) juridical persons of that other Party identified under subparagraph (a);

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

**measures by Parties** means measures taken 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;

**measures by Parties affecting trade in services** includes measures in respect of:

- (a) the purchase, payment or use of a service;
- (b) 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
- (c) the presence, including commercial presence, of persons of a Party for the supply of a service in the territory of the other Party;

**monopoly supplier of a service** means any person, public or private, which in the relevant market of the territory of a Party is authorized or established formally or in effect by that Party as the sole supplier of that service;

**natural person of a Party** means a natural person who is a national under the laws of that Party or a permanent resident<sup>1</sup> of the UAE or Chile;

**person** means either a natural person or a juridical person;

**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 or the applicable conditions;

**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;

**service consumer** means any person that receives or uses a service;

**service supplier** means any person that seeks to supply or supplies a service;<sup>2</sup>

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

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

**specialty air services** means any specialized commercial operation using an aircraft whose primary purpose is not the transportation of goods or passengers, such as aerial fire-fighting, flight training, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, and helicopter-lift for logging and construction, and other airborne agricultural, industrial and inspection services;

**state enterprise** means a juridical person that is owned, or controlled through ownership interests by a Party; and

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<sup>1</sup> For the purposes of the UAE, the term “permanent resident” shall mean any natural person who is in possession of a valid residency permit under the laws and regulations of the UAE.

<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 the Agreement. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the territory where the service is supplied.

**trade in services** means the supply of a service:

- (a) from the territory of a Party into the territory of the other Party (mode 1);
- (b) in the territory of a Party to the service consumer of the other Party (mode 2);
- (c) by a service supplier of a Party, through commercial presence in the territory of the other Party (mode 3), and
- (d) by a service supplier of a Party through presence of natural persons in the territory of the other Party (mode 4).

**traffic rights** means the right for scheduled and non-scheduled services to operate 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.

#### Article 8.2: Scope and Coverage

1. This Chapter shall apply to measures by Parties affecting trade in services.
2. This Chapter shall not apply to:
  - (a) financial services, as defined in paragraph 5(a) of the GATS Annex on Financial Services;
  - (b) government procurement;
  - (c) services supplied in the exercise of governmental authority;
  - (d) subsidies or grants provided by a Party or a state enterprise, including government-supported loans, guarantees, and insurance;
  - (e) measures affecting air traffic rights or measures affecting services directly related to the exercise of air traffic rights, 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) specialty air services;
- (v) airport operation and management services, and
- (vi) ground handling services;
- (f) 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.

3. This Chapter 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.<sup>3</sup>

#### Article 8.3: Most-Favoured Nation Treatment

1. A Party shall accord immediately and unconditionally, in respect of all measures affecting the supply of services, 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.

2. Paragraph 1 shall not apply to:

- (a) treatment granted under other existing or future agreements concluded by one of the Parties and notified under Article V or V *bis* of the GATS as well as treatment granted in accordance with Article VII of the GATS, or
- (b) treatment granted by the UAE to services and service suppliers of the GCC Member States under the GCC Economic Agreement and treatment granted by the UAE under the Greater Arab Free Trade Area (GAFTA).

3. The rights and obligations of the Parties in respect of advantages accorded to adjacent countries shall be governed by paragraph 3 of Article II of the GATS, which is incorporated into and made part of this Chapter, *mutatis mutandis*.

4. If, after the entry into force of this Agreement, a Party enters into any agreement on trade in services with a non-Party, it may consider, upon request by the other Party, the

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<sup>3</sup> The sole fact of requiring a visa for natural persons of a certain country and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.

incorporation into this Agreement of a treatment no less favourable than that provided under the agreement with the non-Party. The Parties shall take into consideration the circumstances under which a Party enters into any agreement on trade in services with a non-Party.

#### Article 8.4: Market Access

1. With respect to market access through the modes of supply identified in the definition of "trade in services" contained in Article 8.1, each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule of Specific Commitments

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, are defined as:

- (a) limitations on the number of services 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 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 of the other Party 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.

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

#### Article 8.5: National Treatment

1. With respect to the services sectors inscribed in its Schedule of Specific Commitments, 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.<sup>5</sup>
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 the Party compared to like services or service suppliers of the other Party.

#### Article 8.6: Additional Commitments

Where a Party undertakes specific commitments on measures affecting trade in services not subject to scheduling under Articles 8.4 and 8.5, such commitments shall be inscribed in that Party's Schedule of Specific Commitments as additional commitments.

#### Article 8.7: Schedules of Specific Commitments

1. Each Party shall set out in a schedule ("Schedule of Specific Commitments"), the specific commitments it undertakes in accordance with Articles 8.4, 8.5, and 8.6.
2. With respect to sectors where such commitments are undertaken, each 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

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<sup>5</sup> Specific commitments assumed under this Article shall not be construed to require either Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

- (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 8.4 and 8.5 shall be inscribed in the column relating to Article 8.4. In this case, the inscription will be considered to provide a condition or qualification to Article 8.5 as well.

3. The Parties' Schedules of Specific Commitments are set out in Annexes 8A and 8B.

#### Article 8.8: Domestic Regulation

1. In sectors where specific commitments are undertaken, each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

2. Each Party shall maintain or institute, as soon as practicable, judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier, 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. The provisions of paragraph 2 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.

4. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards, and licensing requirements do not constitute unnecessary barriers to trade in services, in sectors where specific commitments are undertaken, each Party shall aim to ensure that such measures are:

- (a) based on objective and transparent criteria, such as competence and the ability to supply the service;
- (b) not more burdensome than necessary to ensure the quality of the service, and
- (c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.



5. In determining whether a Party is in conformity with its obligations under paragraph 4, account shall be taken of international standards of relevant international organisations by that Party.<sup>6</sup>

6. Where authorisation is required for the supply of a service by a Party on which a specific commitment under this Agreement has been made, the competent authorities of a Party shall, to the extent practicable and subject to a Party's laws and regulations:

- (a) 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;
- (b) establish an indicative timeframe for the processing of an application;
- (c) if an application is rejected, inform the applicant in writing and without delay of the reasons for the rejection. The applicant will have the possibility of resubmitting, at its discretion, a new application;
- (d) on request of the applicant, provide, without undue delay, information concerning the status of the application; and
- (e) provide the applicant with the opportunity to remedy deficiencies in the application within a reasonable timeframe and endeavour to provide guidance on the additional information required to complete the application.

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

8. If licensing or qualification requirements include the completion of an examination, each Party shall ensure, to the extent possible, 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.

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<sup>6</sup> "Relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of both Parties to the Agreement.

<sup>7</sup> For the purposes of this paragraph, authorisation fees do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

9. In sectors where specific commitments regarding professional services are undertaken, each Party shall provide for adequate procedures in place domestically to verify the competence of professionals of the other Party.

#### Article 8.9: 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 paragraph 3, 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 licenses or certifications granted in the territory of a non-Party, that Party shall afford the other Party adequate opportunity to negotiate its accession to such an agreement or arrangement, whether existing or future, or to negotiate a comparable agreement or arrangement 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.

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

#### Article 8.10: Monopolies and Exclusive Service Suppliers

The rights and obligations of the Parties in respect of monopolies and exclusive service suppliers shall be governed by paragraphs 1, 2, and 5, of Article VIII of the GATS, which are hereby incorporated into and made part of this Agreement.

#### Article 8.11: Business Practices

The rights and obligations of the Parties in respect of business practices shall be governed by Article IX of the GATS, which is hereby incorporated into and made part of this Agreement.

#### Article 8.12: Denial of Benefits

Subject to prior notification, a Party may deny the benefits of this Chapter to:

- (a) service suppliers of the other Party where the service is being supplied from or in the territory of a non-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 a non-Party and the juridical person has no substantial business activities in the territory of the other Party.

#### Article 8.13: Review and Modification of Schedules

1. With the objective of further liberalising trade in services between them, the Parties agree to jointly review their Schedules of Specific Commitments, taking into account any services liberalization developments as a result of on-going work under the auspices of the WTO.

2. Any modification or withdrawal of specific commitments on trade in services shall be made in accordance with Article 21.2 (Amendments). In the negotiations for such modification or withdrawal, the Parties shall enter into negotiations with a view to reaching an agreement on any necessary compensatory adjustment. In such negotiations and agreements, the Parties shall maintain a general level of mutually advantageous commitments not less favourable to trade than that provided for in their Schedules of Specific Commitments set out in Annex 8A and 8B prior to such negotiations.