

07 TRADE IN SERVICES

ARTICLE 1

Definitions

For the purposes of this Chapter:

(a) “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;

(b) “commercial presence” means any type of business or professional establishment, including through:

(i) the constitution, acquisition or maintenance of a legal 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) “direct taxes” comprise all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation;

(d) “existing measures” means measures in force as of the date of entry into force of this Agreement;

(e) “legal 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;

(f) “legal person of the other Party” means a legal person which is either:

(i) constituted or otherwise organised under the law of the other Party; or

(ii) in the case of the supply of a service through commercial presence, owned or controlled by:

(A) natural persons of the other Party; or

- (B) legal persons of the other Party identified under Article 1(f)(i);
- (g) “measure” means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;
- (h) “measures by Parties” means measures taken by:
- (i) central, regional or local governments and authorities; and
 - (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;
- (i) “measures by Parties affecting trade in services” include measures in respect of:
- (i) the purchase, payment or use of a service;
 - (ii) the access to and use of, in connection with the supply of a service, services which are required by the Parties to be offered to the public generally;
 - (iii) the presence, including commercial presence, of persons of a Party for the supply of a service in the territory of the other Party;
- (j) “monopoly supplier of a service” means any person, public or private, which in the relevant market of the territory of a Party is authorised or established formally or in effect by that Party as the sole supplier of that service;
- (k) “natural person of a Party” means a natural person who resides in the territory of the 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 in that Party;
- (l) “new measures” means measures adopted after the date of entry into force of this Agreement;
- (m) “person” means either a natural person or a legal person;
- (n) “services” means all services including new and variant services in any sector except services supplied in the exercise of governmental authority;
- (o) “service consumer” means any person that receives or uses a service;
- (p) “service of the other Party” means a service which is supplied:

- (i) from or in the territory of the other Party, or in the case of maritime transport, by a vessel registered under the laws of the other Party, or by a person of the other Party which supplies the service through the operation of a vessel and/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 the other Party;
- (q) “service supplier” means any person that supplies a service;¹
- (r) “supply of a service” includes the production, distribution, marketing, sale and delivery of a service; and
- (s) “trade in services” is defined as the supply of a service:
- (i) from the territory of a Party into the territory of the other Party (“cross-border”);
 - (ii) in the territory of a Party to the service consumer of the other Party (“consumption abroad”);
 - (iii) by a service supplier of a Party, through commercial presence in the territory of the other Party (“commercial presence”);
 - (iv) by a service supplier of a Party, through presence of natural persons of a Party in the territory of the other Party (“presence of natural persons”).

ARTICLE 2

Scope

1. This Chapter applies to measures by a Party affecting trade in services by service suppliers of the other Party.
2. This Chapter shall not apply to:
 - (a) subsidies or grants 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; or

¹ Where the service is not supplied directly by a legal person but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the legal 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.

(b) a service supplied in the exercise of governmental authority within the territory of each respective Party.

3. 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 citizenship, residence or employment on a permanent basis.

4. Nothing in this Chapter shall prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under the terms of this Chapter.

ARTICLE 3

Market Access

Neither Party shall maintain or adopt, either on the basis of a regional subdivision or on the basis of its entire territory,²

- (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;³
- (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

² Subject to the reservations that a Party makes in respect of market access pursuant to Article 5 (Reservations), where the cross-border movement of capital is an essential part of a service supplied through the mode of supply referred to in Article 1(s)(i), that Party is hereby committed to allow such movement of capital. Subject to the reservations that a Party makes in respect of market access pursuant to Article 5 (Reservations), where a service is supplied through the mode of supply referred to in Article 1(s)(iii) that Party is hereby committed to allow related transfers of capital into its territory.

³ Article 3(c) does not cover measures of a Party which limit inputs for the supply of services.

percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

ARTICLE 4

National Treatment

1. 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.
2. A Party may meet the requirement of Article 4.1 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.
4. 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.

ARTICLE 5

Reservations

1. Articles 3 (Market Access) and 4 (National Treatment) shall not apply to:
 - (a) any existing non-conforming measure that is maintained by a Party at:
 - (i) the central or regional level, as set out in Annex 4-I; or
 - (ii) the local level; or
 - (b) the continuation or prompt renewal of any non-conforming measure referred to in Article 5.1(a).
2. Articles 3 (Market Access) and 4 (National Treatment) shall not apply to any existing or new measure that a Party adopts or maintains with respect to sectors, subsectors or activities as set out in Annex 4-II.
3. Article 11 (Domestic Regulation) shall not apply to:
 - (a) any existing non-conforming measure that is maintained by a Party as set out in Annex 4-I; or

- (b) any existing or new measure that a Party adopts or maintains with respect to sectors, subsectors or activities as set out in Annex 4-II.
- 4. Each Party shall set out its reservations through a description of:
 - (a) with respect to Annex 4-I, the non-conforming measure to which the reservation applies; and
 - (b) with respect to Annex 4-II, the sectors, subsectors or activities to which the reservation applies.

ARTICLE 6

Transitional Provisions on Regional Government Measures

1. Articles 3 (Market Access) and 4 (National Treatment) shall not apply to measures maintained by a Party at the regional level until the first review of this Agreement under Article 3 (Review) of Chapter 17 (Final Provisions), when modifications or additions may be incorporated into the reservations in Annex 4-I and Annex 4-II to extend the coverage of Articles 3 (Market Access) and 4 (National Treatment) to these measures. Following the first review, Articles 3 (Market Access) and 4 (National Treatment) shall apply, at the regional level, unless the non-conforming measures maintained at the regional level are covered by the reservations in Annexes 4-I and 4-II.
2. A Party shall enter into consultations at the request of the other Party with a view to ensuring that modifications or additions incorporated into the reservations in accordance with Article 6.1 are consistent with the overall balance of benefits under the Agreement, and deciding whether any necessary adjustment in the commitments of the Parties is required to preserve this balance. Article 7 (Modification or Addition of Reservations) and Chapter 16 (Dispute Settlement) shall not apply to any such adjustments. The Parties shall not apply any measure affecting trade in services at the regional level in such a manner as would improve their negotiating position and leverage.

ARTICLE 7

Modification or Addition of Reservations

1. By giving three months written notification to the other Party, a Party may modify or add to its non-conforming measures as set out in Annex 4-I and add new sectors, subsectors or activities to its reservations set out in Annex 4-II. At the request of the other Party, it shall hold consultations with a view to reaching agreement on any necessary adjustment required to maintain the overall balance of commitments undertaken by each Party under this Agreement. If agreement is not reached between the Parties on any necessary adjustment, the matter may be referred to arbitration in accordance with Chapter 16 (Dispute Settlement).

2. Article 7.1 shall not be construed to prejudice the right of both Parties to maintain any existing measures or adopt new measures consistent with the reservations set out in Annexes 4-I and 4-II.

ARTICLE 8

Additional Commitments

1. The Parties shall set out their respective additional commitments in Annex 4-III of this Agreement with respect to measures affecting trade in services not covered by Articles 3 (Market Access) and 4 (National Treatment), including those regarding qualifications, standards or licensing matters and any other matters as may be mutually agreed.

ARTICLE 9

Transparency

1. Each Party shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of this Chapter. International agreements pertaining to or affecting trade in services to which a Party is a signatory shall also be published.

2. Where publication as referred to in Article 9.1 is not practicable, such information shall be made otherwise publicly available.

3. Each Party shall respond promptly to all requests by the other Party for specific information on any of its measures of general application or international agreements within the meaning of Article 9.1. Each Party shall also establish one or more enquiry points to provide specific information to the other Party, upon request, on all such matters.

ARTICLE 10

Disclosure of Confidential Information

Nothing in this Chapter shall require any Party to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

ARTICLE 11

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 ensure that its judicial, arbitral or administrative tribunals or procedures which provide for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services are open on a non-discriminatory basis to service suppliers of the other Party. 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. Article 11.2 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. Where authorisation is required for the supply of a service, the competent authorities of a Party shall promptly, 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. With the objective of ensuring that domestic regulation, including measures relating to qualification requirements and procedures, technical standards and licensing requirements, do not constitute unnecessary barriers to trade in services, the Parties shall jointly review the results of the negotiations on disciplines on these measures, pursuant to Article VI.4 of the WTO General Agreement on Trade in Services (GATS), with a view to their incorporation into this Agreement. The Parties note that such disciplines aim to ensure that such requirements are *inter alia*:

(a) based on objective and transparent criteria, such as competence and the ability to supply the service;

(b) not more burdensome than necessary to ensure the quality of the service;

(c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

6. Pending the incorporation of disciplines pursuant to Article 11.5, a Party shall not apply licensing and qualification requirements and technical standards that nullify or impair its obligations under this Chapter in a manner which:

(a) does not comply with the criteria outlined in Articles 11.5(a), 11.5(b) or 11.5(c); and

(b) could not reasonably have been expected of that Party at the time the obligations were undertaken.

7. In determining whether a Party is in conformity with its obligations under Article 11.6, account shall be taken of international standards of relevant international organisations⁴ applied by that Party.

8. Pending the incorporation of disciplines pursuant to Article 11.5, each Party or its competent authorities shall endeavour to:

(a) make publicly available:

(i) information on requirements and procedures to obtain, renew or retain any licences or professional qualifications; and

(ii) information on technical standards;

(b) explain, on request, the policy rationale of a measure, particularly of a new measure; and

(c) provide opportunity for comment, and give consideration to such comments, before their adoption, when introducing measures which significantly affect trade in services.

ARTICLE 12

Monopoly 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 the Party's obligations under Articles 3 (Market Access) and 4 (National Treatment).

2. Where a Party's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that Party's obligations under Articles 3 (Market Access) and 4 (National Treatment), the Party shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.

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

4. The provisions of this Article shall also apply to cases of exclusive service

⁴ The term "relevant international organisations" refers to international bodies whose membership is open to relevant bodies of both Parties.

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 13

Safeguard Measures

Neither Party shall take safeguard action against services and service suppliers of the other Party from the date of entry into force of this Agreement. Neither Party shall initiate or continue any safeguard investigations in respect of services and service suppliers of the other Party.

ARTICLE 14

Payments and Transfers

1. Subject to its reservations pursuant to Article 5 (Reservations) and except under the circumstances envisaged in Article 15 (Restrictions to Safeguard the Balance of Payments), a Party shall not apply restrictions on international transfers and payments for current transactions.

2. Nothing in this Chapter shall affect the rights and obligations of the Parties as members of the International Monetary Fund under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its obligations under this Chapter regarding such transactions, except under Article 15 (Restrictions to Safeguard the Balance of Payments) or at the request of the Fund.

ARTICLE 15

Restrictions to Safeguard the Balance of Payments

1. In the event of serious balance of payments and external financial difficulties or threat thereof, a Party may adopt or maintain restrictions on trade in services in respect of which it has obligations under Articles 3 (Market Access) and 4 (National Treatment), including on payments or transfers for transactions relating to such obligations. It is recognized that particular pressures on the balance of payments of a Party in the process of economic development may necessitate the use of restrictions to ensure, *inter alia*, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development.

2. The restrictions referred to in Article 15.1 shall:

- (a) be consistent with the Articles of Agreement of the International Monetary Fund;

- (b) avoid unnecessary damage to the commercial, economic and financial interests of the other Party;
 - (c) not exceed those necessary to deal with the circumstances described in Article 15.1;
 - (d) be temporary and be phased out progressively as the situation specified in Article 15.1 improves;
 - (e) be applied on a national treatment basis and such that the other Party is treated no less favourably than any non-Party.
3. Any restrictions adopted or maintained under Article 15.1, or any changes therein, shall be promptly notified to the other Party.
4. The Party adopting any restrictions under Article 15.1 shall commence consultations with the other Party in order to review the restrictions adopted by it.

ARTICLE 16

Government Procurement

Articles 3 (Market Access) and 4 (National Treatment) shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale.

ARTICLE 17

Denial of Benefit

Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to a service supplier of the other Party where the Party establishes that the service supplier is owned or controlled by persons of a non-Party and that it has no substantive business operations in the territory of the other Party.

ARTICLE 18

General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties where like conditions prevail, or a disguised restriction on trade in services, nothing in this Chapter shall be construed to prevent the adoption or enforcement by a Party of measures:

- (a) necessary to protect public morals or to maintain public order;⁵
- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter including those relating to:
 - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;
 - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
 - (iii) safety;
- (d) inconsistent with Article 4 (National Treatment), provided that the difference in treatment is aimed at ensuring the equitable or effective⁶ imposition or collection of direct taxes in respect of services or service suppliers of the other Party.

⁵ The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

⁶ Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Party under its taxation system which:

- (i) apply to non-resident service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Party's territory; or
- (ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Party's territory; or
- (iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or
- (iv) apply to consumers of services supplied in or from the territory of the other Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Party's territory; or
- (v) distinguish service suppliers subject to tax on worldwide taxable items from other service suppliers, in recognition of the difference in the nature of the tax base between them; or
- (vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Party's tax base.

Tax terms or concepts in Article 18(d) and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Party taking the measure.

ARTICLE 19

Security Exceptions

Nothing in this Chapter shall be construed:

- (a) to require a Party to furnish any information, the disclosure of which it considers contrary to its essential security interests; or
- (b) to prevent a Party from taking any action which it considers necessary for the protection of its essential security interests:
 - (i) relating to the supply of services as carried out directly or indirectly for the purpose of provisioning a military establishment;
 - (ii) relating to fissionable and fusionable materials or the materials from which they are derived;
 - (iii) taken in time of war or other emergency in international relations; or
- (c) to prevent a Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

ARTICLE 20

Review of Commitments

1. If, after this Agreement enters into force, a Party enters into any agreement on trade in services with a non-Party, it shall give positive consideration to a request by the other Party for the incorporation herein of treatment no less favourable than that provided under the aforesaid agreement. Any such incorporation should maintain the overall balance of commitments undertaken by each Party under this Agreement.
2. If, after this Agreement enters into force, a Party further liberalizes any of its non-conforming measures in Annex 4-I or sectors, subsectors, or activities in Annex 4-II unilaterally, it shall give positive consideration to a request by the other Party for the incorporation herein of the unilateral liberalisation. Any such incorporation should maintain the overall balance of commitments undertaken by each Party under this Agreement.
3. If, after this Agreement enters into force, a service previously supplied in the exercise of governmental authority is subsequently supplied on a commercial basis or in competition with one or more service suppliers, the Party concerned may modify or add to its reservations in respect of that service. At the request of the other Party, the Party concerned shall enter into consultations with a view to ensuring the maintenance

of the overall balance of commitments undertaken by each Party under this Agreement.

ARTICLE 21

Review of Subsidies

1. The Parties shall review the treatment of subsidies in the context of developments in international fora of which both Parties are Members.
2. The Parties shall consult on appropriate steps in regard to subsidies related to trade in services where any subsidies issues arise under this Chapter.

ARTICLE 22

Air Transport Services

1. For the purposes of this Article:
 - (a) "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;
 - (b) "air transport" means the public carriage by aircraft of passengers, baggage, cargo or mail, separately or in combination, for remuneration or hire; and
 - (c) "computer reservation system (CRS) 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.
2. This Chapter and Chapter 16 (Dispute Settlement), shall not apply to measures affecting:
 - (a) rights in relation to air transport, however granted; or
 - (b) services directly related to the exercise of rights in relation to air transport, except as provided in paragraph 3 of this Article.
3. This Chapter shall apply to measures affecting:
 - (a) aircraft repair and maintenance services; and
 - (b) computer reservation system services (CRS).
4. Both Parties agree to review developments in the air transport sector at the first review of this Agreement under Article 3 (Review) of Chapter 17 (Final

Provisions), or at any other time agreed between the Parties, with a view to including these developments in this Agreement.

5. While both Parties affirm their rights and obligations under the Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Singapore relating to Air Services, signed on 3 November 1967 and any subsequent amendments thereto, both Parties agree to work towards an Open Skies Air Services Agreement and to review that work in accordance with the provisions of Article 22.4.

6. The Parties affirm, *mutatis mutandis*, their rights and obligations under the GATS, including the Annex on Air Transport Services.

ARTICLE 23

Recognition

1. For the purposes of the fulfilment of its standards or criteria for the authorisation, licensing or certification of services suppliers, a Party may recognise the education or experience obtained, requirements met, or licenses or certifications granted in the other Party.

2. The Parties shall encourage their relevant competent bodies to enter into negotiations on recognition of professional qualifications and/or registration procedures with a view to the achievement of early outcomes.