

## CHAPTER 9

### TRADE IN SERVICES

#### ARTICLE 9.1

##### Definitions

For the purposes of this Chapter:

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and maintenance services** means such activities when undertaken on an aircraft or a part thereof while the aircraft is withdrawn from service and does not include so-called line maintenance;

**airport operation and management services** mean 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 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** 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;

**ground handling services** mean 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 the food); air cargo and mail handling; fueling 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 or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust/fund, partnership, joint venture, sole proprietorship, or association;

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

- (a) constituted or otherwise organised under the law of that 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).

**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; or
- (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;

**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** mean measures taken by:

- (a) central, regional or local governments or 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** include measures in respect of:

- (a) the purchase or use of, or payment for, 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 authorised or established formally or in effect by that Party as the sole supplier of that service;

**natural person** means:

- (a) for the UAE a national or a permanent resident<sup>1</sup>;
- (b) for New Zealand, a citizen of New Zealand under its laws or a natural person who has the right of permanent residence in New Zealand;

**sector of a service** means:

- (a) with reference to a specific commitment, one or more, or all, subsectors of that service, as specified in a Party's Schedule; or
- (b) otherwise, the whole of that service sector, including all of its subsectors;

**selling and marketing of air transport services** mean 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;

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

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

**service of the other Party** means a service which is supplied:

- (a) from or in the territory of that Party, or in the case of maritime transport, by a vessel registered under the laws of that Party, or by a person of that Party which supplies the service through the operation of a vessel or its use in whole or in part; or
- (b) in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of a Party;

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

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<sup>1</sup> With respect to 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 this Chapter. 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.

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

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

- (a) from the territory of a Party into the territory of the other Party;
- (b) in the territory of a Party to the service consumer of the other Party;
- (c) by a service supplier of a Party, through commercial presence in the territory of the other Party;
- (d) by a service supplier of a Party, through presence of natural persons of a Party in the territory of the other Party;

**traffic rights** means the rights 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 9.2**

### **Scope and Coverage**

1. This Chapter applies to measures by Parties affecting trade in services.
2. This Chapter shall not apply to:
  - (a) government procurement;
  - (b) services supplied in the exercise of governmental authority;
  - (c) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance; and
  - (d) 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.
  - (e) measures affecting air traffic rights however granted, 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 services;
- (iv) specialty air services;
- (v) airport operation and management services; or
- (vi) ground-handling services.

3. Nothing in this Chapter shall 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 any Party under the terms of a specific commitment.<sup>3</sup>

### **ARTICLE 9.3**

#### **Schedules of Specific Commitments**

1. Each Party shall set out in its Schedule of Specific Commitments, the specific commitments it undertakes in accordance with Articles 9.5, 9.6, and 9.7.
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;
  - (d) where appropriate, the timeframe for implementation of such commitments;  
and
  - (e) where appropriate, the date of entry into force of such commitments.
3. Measures inconsistent with both Articles 9.5 and 9.6 shall be inscribed in the column relating to Article 9.5. In this case, the inscription will be considered to provide a condition or qualification to Article 9.6 as well.
4. The Parties' Schedules of Specific Commitments are set forth in Annex 9C and Annex 9D.

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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.

**ARTICLE 9.4**  
**Most-Favoured Nation Treatment**

1. In respect of the services sectors listed for each Party in its Most Favoured Nation Sectoral Coverage Appendix (Annex 9E), and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords to like services and service suppliers of a non-party.
2. Notwithstanding paragraph 1, each Party reserves the right to adopt or maintain any measure that accords differential treatment to services and service suppliers of any non-party under any free trade agreement or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.
3. For greater certainty, paragraph 2 includes, in respect of agreements on the liberalisation of trade in goods or services or investment, any measures taken as part of a wider process of economic integration or trade liberalisation between the parties to such an agreement.
4. For sectors and subsectors not set out in a Party's Most-Favoured-Nation Treatment Sectoral Coverage Appendix (Annex 9-E) pursuant to paragraph 1, if, after the date of entry into force of this Agreement, a Party subsequently enters into any agreement with a non-party in which it provides to services or service suppliers of that non-party treatment more favourable than it accords to like services or service suppliers of the other Party, the other Party may request consultations to discuss the possibility of extending, under this Agreement, treatment no less favourable than that provided under the agreement with the non-party. In such circumstances, the Parties shall enter into consultations bearing in mind the overall balance of benefits.

**ARTICLE 9.5**  
**Market Access**

1. With respect to market access through the modes of supply identified in the definition of "trade in services" contained in Article 9.2, each Party shall accord services and service suppliers of the other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule of Specific Commitments.<sup>4</sup>

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<sup>4</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 (a) of the definition of "trade in services" contained in Article 9.1 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 (c) of the definition of "trade in services" contained in Article 9.1, it is thereby committed to allow related transfers of capital into its territory.

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:

(i) the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;

(ii) the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(iii) 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>5</sup>

(iv) 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; and

(v) the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment; and

(b) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

## **ARTICLE 9.6** **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>6</sup>

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<sup>5</sup> Subparagraph 2(a)(iii) does not cover measures of a Party which limit inputs for the supply of services.

<sup>6</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.

2. A Party may meet the requirement in paragraph 1 by according to services and service suppliers of the other Party either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.

3. Formally identical or formally different treatment by a Party shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of that Party compared to the like service or service suppliers of the other Party.

### **ARTICLE 9.7** **Additional Commitments**

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 9.5 and 9.6, including those regarding qualification, standards, or licensing matters. Such commitments shall be inscribed in a Party's Schedule of Specific Commitments.

### **ARTICLE 9.8** **Modification of Schedules**

Upon written request by a Party, the Parties shall hold consultations to consider any modification or withdrawal of a specific commitment in the requesting Party's Schedule of Specific Commitments. The consultations shall be held within three months of the requesting Party making its request. In the consultations, the Parties shall aim to ensure that a general level of mutually advantageous commitments no less favourable to trade than that provided for in the Schedule of Specific Commitments prior to such consultations is maintained. Modifications of Schedules are subject to any procedures adopted by the Joint Committee established in Chapter 19 (Administration of the Agreement).

### **ARTICLE 9.9** **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. If a Party adopts or maintains a measure relating to the authorisation for the supply of a service of general application, the Party shall, with respect to that measure, ensure that:

- (a) the measure is based on objective and transparent criteria;<sup>7</sup>

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<sup>7</sup> For greater certainty, these criteria may include competence and the ability to supply a service, including to do so in a manner consistent with a Party's regulatory requirements, such as health, labour,



- (b) the competent authority reaches and administers any decision in a manner independent from any supplier of the service for which authorisation is required;<sup>8</sup>
- (c) the procedures in the measure are impartial, adequate for applicants to demonstrate whether they meet the requirements for authorisation, and do not in themselves unjustifiably prevent fulfilment of a requirement;
- (d) to the extent practicable, the measure does not require an applicant to approach more than one competent authority for each application for authorisation;<sup>9</sup> and
- (e) the measure does not discriminate between men and women.<sup>10</sup>

3. Where authorisation is required for the supply of a service on which a specific commitment under this Chapter has been made, the competent authorities of each Party shall:

- (a) within a reasonable period of time after the submission of an application considered complete under its domestic laws and regulations, inform the applicant of the decision concerning the application;
- (b) in the case of an incomplete application:
  - (i) inform the applicant that the application is incomplete; and
  - (ii) on request of the applicant, identify all the additional information that is required to complete the application and provide the opportunity to remedy deficiencies within a reasonable timeframe;
- (c) on request of the applicant, provide without undue delay information concerning the status of the application; and
- (d) if an application is terminated or denied, to the extent practicable, inform the applicant in writing, and without delay, the reasons for such action. The applicant will have the possibility of resubmitting, at its discretion, a new application.

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and environmental requirements. Competent authorities may assess the weight to be given to each criterion.

<sup>8</sup> For greater certainty, this provision does not mandate a particular administrative structure; it refers to the decision-making process and administering of decisions.

<sup>9</sup> For greater certainty, a Party may require multiple applications for authorisation if a service is within the jurisdiction of multiple competent authorities.

<sup>10</sup> Differential treatment that is reasonable and objective, and aims to achieve a legitimate purpose, and adoption by the Parties of temporary special measures aimed at accelerating de facto equality between men and women, shall not be considered discrimination for the purposes of this provision.

4. If a Party requires authorisation for the supply of a service, the Party shall promptly publish or otherwise make publicly available the information necessary to comply with requirements or procedures for obtaining, maintaining, amending, and renewing that authorisation. That information shall include:

- (a) any fee;
- (b) the contact information of the relevant competent authorities;
- (c) any procedure for appeal or review of a decision concerning an application;
- (d) any procedure for monitoring or enforcing compliance with the terms and conditions of licenses or qualifications;
- (e) any opportunities for public involvement, such as through hearings or comments;
- (f) any indicative timeframe for processing of an application;
- (g) any requirement or procedure; and
- (h) any technical standard.

5. If a Party requires authorisation for the supply of a service, it shall ensure that each competent authority:

- (a) endeavours to accept applications in electronic format;
- (b) endeavours to accept requests to take any required examination in electronic format and to consider, to the extent practicable, the use of electronic means in other aspects of the examination process; and
- (c) accepts copies of documents, that are authenticated in accordance with the Party's domestic laws and regulations, in place of original documents, unless the competent authorities require original documents to protect the integrity of the authorisation process.

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

7. In determining whether a Party is in conformity with the obligation under subparagraph 6, account shall be taken of international standards of relevant international organisations applied by that Party.<sup>11</sup>

8. Each Party shall ensure that any authorisation fee charged by each of its competent authorities is reasonable, transparent, based on authority set out in a measure, and does not, in itself, restrict the supply of the relevant service.<sup>12</sup>

9. Each Party shall endeavour to ensure that measures related to authorisation do not impose disproportionate burdens on micro-, small-, and medium-sized enterprises.

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

11. The Parties shall jointly review the results of the negotiations on disciplines on domestic regulation, pursuant to Article VI.4 of the GATS, with a view of incorporating them into this Chapter.

## **ARTICLE 9.10**

### **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 4, a Party may recognise, or encourage its relevant competent bodies to recognise, the education or experience obtained, requirements met, or licences or certifications granted in the other Party. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement between the Parties or their relevant competent bodies, or may be accorded autonomously.

2. If a Party recognises, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licences or certifications granted, in the territory of a non-party, nothing in Article 9.4 shall be construed to

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<sup>11</sup> The term “relevant international organisations” refers to international bodies whose membership is open to the relevant bodies of the Parties to this Agreement.

<sup>12</sup> For the purposes of this paragraph, an authorisation fee does not include a fee for the use of natural resources, payments for auction, tendering, or other non-discriminatory means of awarding concessions, or mandated contributions to the provision of universal service.

require the Party to accord recognition to the education or experience obtained, requirements met, or licences or certifications granted, in the territory of the other Party.

3. Where a Party recognises, 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.

4. A Party shall not accord recognition in a manner which would constitute a means of discrimination between the other Party and non-parties in the application of its standards or criteria for the authorisation, licensing or certification of service suppliers, or a disguised restriction on trade in services.

5. The Parties agree to encourage, where possible, the relevant bodies in their respective territories responsible for issuance and recognition of professional and vocational qualifications to:

(a) strengthen cooperation and to explore possibilities for mutual recognition of respective professional and vocational qualifications; and

(b) pursue mutually acceptable standards and criteria for licensing and certification with respect to service sectors of mutual importance to the Parties.

## **ARTICLE 9.11**

### **Payments and Transfers**

1. Except under the circumstances envisaged in Article 21.5 (Restrictions to Safeguard the Balance-of-Payments), a Party shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments.

2. Nothing in this Chapter shall affect the rights and obligations of a Party as a member of the International Monetary Fund (hereinafter referred to as the IMF) under the IMF Articles of Agreement, including the use of exchange actions which are in conformity with the IMF Articles of Agreement, provided that a Party shall not impose restrictions on any capital transaction inconsistently with its specific commitments regarding such transactions, except under Article 21.5 (Restrictions to Safeguard the Balance-of-Payments) or at the request of the IMF.

**ARTICLE 9.12**  
**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 9.4, and its specific commitments.
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. 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 9.13**  
**Business Practices**

1. The Parties recognise that certain business practices of service suppliers, other than those falling under Article 9.12, 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 9.14**  
**Denial of Benefits**

1. A Party may deny the benefits of this Chapter to a service supplier that is a juridical person, if persons of a non-party own or control that juridical person 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 Agreement were accorded to the juridical person.

2. In the case of the supply of a maritime transport service, a Party may deny the benefits of this chapters if it establishes that the service is supplied:

(a) by a vessel registered under the laws of a non-party, and

(b) by a person of a non-party which operates or uses the vessel in whole or in part.

3. A Party may deny the benefits 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 or by persons of the denying Party that have no substantial business activities in the territory of the denying Party.

#### **ARTICLE 9.15** **Review**

1. In any review of this Agreement conducted in accordance with Article 19.6 (General Review) the Parties shall review this Chapter and related Annexes and Schedules so as to progressively liberalise trade in services between the Parties.

2. The first such review shall take place five years after the entry into force of this Agreement unless the Parties agree otherwise.

3. Further to paragraph 1, the Parties shall review their approach to the scheduling of commitments in accordance with Article 9.3, including whether either Party considers it appropriate to transition to making commitments on a negative list basis.

#### **ARTICLE 9.16** **Annexes**

The following Annexes form an integral part of this Chapter:

(a) Annex 9-A (Financial Services);

(b) Annex 9-B (Telecommunications Services);

(c) Annex 9-C (Schedule of Specific Commitments of New Zealand);

(d) Annex 9-D (Schedule of Specific Commitments of UAE); and

(e) Annex 9-E (MFN Sectoral Coverage List).