

AGREEMENT ESTABLISHING THE ASEAN-AUSTRALIA NEW ZEALAND FREE TRADE AREA

CHAPTER 8

TRADE IN SERVICES

Article 1

Scope and Coverage

1. This Chapter applies 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; and
 - (b) non-governmental bodies in the exercise of powers delegated by central, regional, or local governments or authorities.
3. 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.
4. This Chapter shall not apply to measures affecting:
 - (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 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 within the territory of each respective Party, as defined in Article 2(q) (Definitions), or
- (d) in respect of 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:
 - (i) aircraft repair and maintenance services;
 - (ii) the selling and marketing of air transport services; and
 - (iii) computer reservation system services.

5. The Parties note the multilateral negotiations pursuant to the review of the *GATS Annex on Air Transport Services*. Upon the conclusion of such multilateral negotiations, the Parties shall conduct a review for the purpose of discussing appropriate amendments to this Agreement so as to incorporate the results of such multilateral negotiations.

6. Nothing in this Chapter shall apply to measures affecting natural persons seeking access to the employment market of another Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.

Article 2 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repair and maintenance services** means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from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 do 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 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) In the case of 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) **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 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 those Parties 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 the other Party;
- (i) **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;
- (j) **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 residence¹ 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 that no Party is obligated to accord to such permanent residents treatment more favourable than would be accorded by that Party to such permanent residents;
- (k) **person** means a natural person or a juridical person;

¹ Where a Party has made a reservation with respect to permanent residents in its schedules under this Agreement, that reservation shall not prejudice the Parties' rights and obligations in GATS.

- (l) **sector of a service** means:
 - (i) with reference to a specific commitment, one or more, or all, subsectors of that service, as specified in a Party's schedules of specific commitments in Annex 3 (Schedules of Specific Services Commitments); and
 - (ii) otherwise, the whole of that service sector, including all of its subsectors;
- (m) **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;
- (n) **services** includes any service in any sector except services supplied in the exercise of governmental authority;
- (o) **service of another Party** means a service which is supplied:
 - (i) from or in the territory of that other Party; 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;

- (p) **service supplier** means a person that supplies a service²;
- (q) **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;
- (r) **supply of a service** includes the production, distribution, marketing, sale and delivery of a service;
- (s) **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;
 - (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
- (t) **traffic rights** means the right for scheduled and non-scheduled services to operate and/or carry passengers, cargo and mail for remuneration or

² 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. 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.

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 3 National Treatment

1. In sectors inscribed in its schedules of specific commitments in Annex 3 (Schedules of Specific Services Commitments) or Annex 4 (Schedules of Movement of Natural Persons Commitments), and subject to any conditions and qualifications set out therein, each Party 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.³
2. A Party may meet the requirement of Paragraph 1 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.
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 any other Party.

³ 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.

Article 4

Market Access

1. With respect to market access through the modes of supply identified in Article 2(s) (Definitions), each Party 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 schedules of specific commitments in Annex 3 (Schedules of Specific Services Commitments) or Annex 4 (Schedules of Movement of Natural Persons Commitments).⁴

2. In sectors where market access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its schedules of specific commitments in Annex 3 (Schedules of Specific Services Commitments) or Annex 4 (Schedules of Movement of Natural Persons Commitments), 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;

⁴ If a Party undertakes a market-access commitment in relation to the supply of a services through the mode of supply referred to in Article 2(s)(i) (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 through the mode of supply referred to in Article 2(s)(iii) (Definitions), it is hereby committed to allow related transfers of capital into its territory.

- (c) limitations on the total number of service operations or on the total quantity of services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test⁵;
- (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 5 Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to Article 3 (National Treatment) or Article 4 (Market Access), including those regarding qualifications, standards or licensing matters. Such commitments shall be set out in a Party's schedules of specific commitments in Annex 3 (Schedules of Specific Services Commitments) and Annex 4 (Schedules of Movement of Natural Persons Commitments).

⁵ Subparagraph (c) does not cover measures of a Party which limit inputs for the supply of services.

Article 6

Review of Commitments

The Parties shall enter into successive rounds of negotiations, beginning not later than three years from the date of entry into force of this Agreement, and periodically thereafter as determined by the FTA Joint Committee, with a view to further improving specific commitments under this Chapter so as to progressively liberalise trade in services among the Parties.

Article 7

Consultations on Most-Favoured-Nation Treatment

1. Subject to Paragraph 2, if, after this Agreement enters into force, a Party enters into any agreement on trade in services with a non-Party in which it provides treatment to services or service suppliers of that non-Party more favourable than it accords to like services or service suppliers of other Parties under this Agreement, any 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. The requested Party shall enter into consultations with the requesting Party bearing in mind the overall balance of benefits. The requesting Party shall notify all the other Parties of their request for consultations under this Paragraph.

2. No Party shall be obliged to apply Paragraph 1 with respect to treatment provided under any bilateral or plurilateral agreement between an individual ASEAN Member State, or individual ASEAN Member States, and non-Parties or Australia or New Zealand.

3. The consulting Parties shall notify the results of the consultations to all other Parties as soon as practicable and by no later than the next meeting of the Services Committee

established pursuant to Article 24 (Committee on Trade in Services) following the conclusion of consultations.

4. Notwithstanding Paragraph 1, a Party shall not be obliged to enter into consultations in relation to treatment provided under any international agreement that entered into force or was signed prior to the date of entry into force of this Agreement including, 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 agreements.

Article 8

Schedules of Specific Commitments

1. Each Party shall set out in a schedule the specific commitments it undertakes under Article 3 (National Treatment), Article 4 (Market Access) and Article 5 (Additional Commitments). With respect to sectors where such commitments are undertaken, each schedule 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 time-frame for implementation of such commitments; and
- (e) the date of entry into force of such commitments.

2. Measures inconsistent with both Market Access and National Treatment shall be inscribed in the column relating to Market Access. In this case, the inscription will be

considered to provide a condition or qualification to National Treatment as well.

3. Schedules of specific services commitments shall be set out in Annex 3 (Schedules of Specific Services Commitments) of this Agreement. The specific commitments in respect of the supply of a service by a service supplier of one Party through presence of natural persons of a Party in the territory of another Party shall be set out in Annex 4 (Schedules of Movement of Natural Persons Commitments) of this Agreement.

Article 9 Modification of Schedules

1. A Party may modify or withdraw any commitment in its schedule of specific commitments in Annex 3 (Schedules of Specific Services Commitments) or Annex 4 (Schedules of Movement of Natural Persons Commitments), at any time after three years have elapsed from the date on which this Agreement enters into force, in accordance with the procedures set out in Article XXI of GATS, *mutatis mutandis*, and the Procedures for the Implementation of Article XXI of GATS set out in WTO document S/L/80 of 29 October 1999 (the GATS Article XXI Procedures), *mutatis mutandis*, as amended from time to time.

2. For the avoidance of doubt, references in Article XXI of GATS and the GATS Article XXI Procedures to the “Secretariat” and the “Council for Trade in Services” shall each be read as references to the FTA Joint Committee.

Article 10 Domestic Regulation

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

2. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements and procedures, do not constitute unnecessary barriers to trade in services, the Parties shall jointly review the results of the WTO negotiations on disciplines on such measures, pursuant to Article VI.4 of GATS, and shall amend this Article, as appropriate, after consultations among the Parties, to bring the results of those negotiations into effect under this Agreement. The Parties note that the disciplines arising from such negotiations shall aim to ensure that qualification requirements and procedures, technical standards and licensing requirements and procedures 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; and
- (c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

3. In sectors in which a Party has undertaken specific commitments under Article 3 (National Treatment), Article 4 (Market Access) and Article 5 (Additional Commitments), pending the incorporation of the disciplines referred to in Paragraph 2, that Party shall not apply licensing and qualification requirements and technical standards that nullify or impair such specific commitments under this Agreement in a manner which:

- (a) does not comply with the criteria outlined in Paragraph 2(a), (b) or (c); and

- (b) could not reasonably have been expected of that Party at the time the specific commitments in those sectors were made.

4. In determining whether a Party is in conformity with its obligations under Paragraph 3(a), account shall be taken of international standards of relevant international organisations applied by that Party.⁶

5. Where authorisation is required for the supply of a service on which a specific commitment has been made, the competent authorities of that Party shall:

- (a) in the case of an incomplete application, at the 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;
- (b) within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application;
- (c) at the request of the applicant, provide, without undue delay, information concerning the status of the application under consideration; and
- (d) if an application is terminated or denied, to the maximum extent possible, 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.

6. In sectors where specific commitments regarding professional services are undertaken, each Party shall

⁶ The term “relevant international organisations” refers to international bodies whose membership is open to the relevant bodies of all the Parties.

provide for adequate procedures to verify the competency of professionals of the other Parties.

7. Subject to its domestic laws and regulations, each Party shall permit service suppliers of the other Parties to use the business names under which they ordinarily trade in the territories of the other Parties and otherwise ensure that the use of business names is not unduly restricted.

Article 11 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 others' markets. Each Party shall promote regulatory transparency in trade in services.

Publication

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 of the kind referred to in Paragraph 2 available on the internet.

4. Where publication referred to in Paragraphs 2 and 3 is not practicable, such information⁷ shall be made otherwise publicly available.

5. To the extent provided for under its domestic legal framework, each Party shall endeavour to provide a reasonable opportunity for comments by interested persons of the Parties on measures referred to in Paragraph 2(a) before adoption.

Contact Points

6. Each Party shall designate a contact point to facilitate communications among the Parties on any matter covered by this Chapter. Upon the 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.

7. Each Party shall respond promptly to all requests by any other Party for specific information on:

- (a) any measures referred to in Paragraph 2(a) or international agreements referred to in Paragraph 2(b); and
- (b) any new, or any changes to existing, laws, regulations or administrative guidelines which significantly affect trade in services covered by the Party's specific commitments under this

⁷ For greater certainty, the Parties agree that such information may be published in each Party's chosen language.

Chapter, whether or not the other Party has been previously notified of the new or changed law, regulation or administrative guideline.

Article 12

Development and Application of Regulations

Administrative Processes

1. With a view to administering in a consistent, impartial and reasonable manner its laws, regulations, procedures and administrative rulings of general application affecting trade in services, each Party shall ensure that its administrative agencies, in applying such laws, regulations, procedures and administrative rulings to particular services or service suppliers of another Party in specific cases through administrative processes, including adjudication, rule-making, licensing, determination and approval processes:

- (a) to the extent provided under its domestic legal framework, and where possible, provide service suppliers of the other Party that are directly affected by an administrative process with reasonable notice that the process is taking place;
- (b) to the extent provided under its domestic legal framework, endeavour to afford such service suppliers with reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the process and the public interest permit; and
- (c) follow procedures that are in accordance with its laws.

Review and Appeal

2. Each Party shall maintain judicial, arbitral or administrative tribunals or procedures for the purpose of the prompt review⁸, and, where warranted, correction of final administrative actions resulting from the processes covered by Paragraph 1. Where such procedures or tribunals are not independent of the agency entrusted with the administrative action concerned, each Party shall ensure that the tribunals or procedures provide for an objective and impartial review.

3. Each Party shall ensure that, in any such tribunal or under any such procedures, the parties to any proceedings are provided with the right to:

(a) a reasonable opportunity to support or defend their respective positions; and

(b) a decision in accordance with the Party's laws.

4. Each Party shall ensure, subject to appeal or further review as provided in its law, that any decision referred to in Paragraph 3(b) shall be implemented in accordance with its laws.

Article 13 Disclosure of Confidential Information

Nothing in this Chapter shall be construed as requiring a Party to provide to the other Parties confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or which would prejudice the legitimate commercial interests of particular juridical persons, public or private.

⁸ For avoidance of doubt, "review" includes merits review only where provided for under the Party's law.

Article 14
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 3 (National Treatment) and Article 4 (Market Access).
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 specific commitments, 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 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 the Party establishing, maintaining or authorising such 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 15
Business Practices

1. Parties recognise that certain business practices of service suppliers, other than those falling under Article 14

(Monopolies and Exclusive Service Suppliers), may restrain competition and thereby restrict trade in services.

2. Each Party shall, at the request of any other Party, enter into consultations with a view to eliminating practices referred to in Paragraph 1. The Party addressed shall accord full and sympathetic consideration to such a request and shall co-operate through the supply of publicly available non-confidential information available to the requesting Party. The requested Party may also provide other information available to the requesting Party, subject to its domestic law and to the conclusion of satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Party.

Article 16 Recognition

1. For the purpose 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 3, a Party may recognise the education or experience obtained, requirements met, 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 a party to an agreement or arrangement of the type referred to in Paragraph 1, whether existing or future, shall afford adequate opportunity for other interested Parties 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. 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.

4. Where appropriate, recognition should be based on multilaterally agreed criteria. In appropriate cases, Parties shall work in co-operation 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.

5. Each Party shall encourage competent bodies in its territory to enter into negotiations for agreements or arrangements on recognition of professional qualification requirements, qualification procedures, licensing or registration requirements, and licensing or registration procedures with a view to the achievement of early outcomes.

Article 17

Payments and Transfers

1. Except under the circumstances envisaged in Article 4 (Measures to Safeguard the Balance of Payments) of Chapter 15 (General Provisions and Exceptions), a Party shall not apply restrictions on international transfers or payments for current transactions relating to its specific commitments.

2. Nothing in this Chapter shall affect the rights and obligations of any of the Parties as members of the International Monetary Fund 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 transactions inconsistent with its specific commitments

regarding such transactions, except under Article 4 (Measures to Safeguard the Balance of Payments) of Chapter 15 (General Provisions and Exceptions) or at the request of the International Monetary Fund.

Article 18 Subsidies

1. Notwithstanding Article 1.4(b) (Scope and Coverage), 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.
2. Parties recognise that, in certain circumstances, subsidies may have distortive effects on trade in services. Any Party which considers that it is adversely affected by a subsidy of another Party may request consultations with that Party on such matters. Such request shall be accorded sympathetic consideration.

Article 19 Safeguard Measures

1. The Parties note the multilateral negotiations pursuant to Article X of GATS on the question of emergency safeguard measures based on the principle of non-discrimination. Upon the conclusion of such multilateral negotiations, the Parties shall conduct a review for the purpose of discussing appropriate amendments to this Agreement so as to incorporate the results of such multilateral negotiations.
2. In the event that the implementation of the commitments made in this Agreement causes substantial adverse impact to a service sector of a Party before the conclusion of the multilateral negotiations referred to in Paragraph 1, the affected Party may request consultations with the other Party or Parties. The requested Party or Parties shall enter into consultations with the requesting

Party on the commitments that the requested Party or Parties consider may have caused substantial adverse impact and on the possibility of the requesting Party adopting any measure to alleviate such impact. The requesting Party shall notify all the other Parties of their request for consultations under this Paragraph.

3. Any measures taken pursuant to Paragraph 2 shall be mutually agreed by the Parties concerned.

4. The consulting Parties shall notify the results of the consultations to all other Parties as soon as practicable and by no later than the next meeting of the Services Committee established pursuant to Article 24 (Committee on Trade in Services) following the conclusion of consultations.

Article 20

Increasing Participation for Newer ASEAN Member States

In order to increase the benefits of this Chapter for the newer ASEAN Member States, and in accordance with the objectives of and the Preamble to this Agreement and the objectives of Chapter 12 (Economic Co-operation), the Parties recognise the importance of according special and differential treatment to the newer ASEAN Member States and facilitating their participation in this Chapter through negotiated specific commitments relating to:

- (a) strengthened domestic services capacity and its efficiency and competitiveness, *inter alia*, through access to technology on a commercial basis;
- (b) improved access to distribution channels and information networks;
- (c) commitments in sectors of export interest to newer ASEAN Member States; and

- (d) recognising that commitments by each newer ASEAN Member State may be made in accordance with its individual stage of development.

Article 21

Denial of Benefits

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) 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 of a non-Party, and
 - (ii) by a person of a non-Party which operates and/or uses the vessel in whole or in part;
- (c) to a service supplier, that is a juridical person, if it establishes that it is not a service supplier of another Party.

Article 22

Treatment and Protection of Commercial Presence

1. Chapter 11 (Investment) does not apply to measures adopted or maintained by a Party to the extent that they are covered by this Chapter.
2. Notwithstanding Paragraph 1, the following Articles and Section of Chapter 11 (Investment) apply, *mutatis mutandis*, to measures affecting the supply of services by a service

supplier of a Party through commercial presence in the territory of another Party:

- (a) Article 6 (Treatment of Investment);
- (b) Article 7 (Compensation for Losses);
- (c) Article 8 (Transfers);
- (d) Article 9 (Expropriation and Compensation);
- (e) Article 10 (Subrogation); and
- (f) Section B (Investment Disputes between a Party and an Investor).

Article 23 **Miscellaneous Provisions**

1. The GATS *Annex on Telecommunications* shall be incorporated into and shall form part of this Agreement, *mutatis mutandis*.
2. Additional provisions on financial services and telecommunications are set out in this Chapter's Annexes.

Article 24 **Committee on Trade in Services**

1. The Parties hereby establish a Committee on Trade in Services (Services Committee), consisting of representatives of the Parties.
2. The Services Committee's functions shall be:
 - (a) to conduct reviews of commitments in accordance with Article 6 (Review of Commitments);

- (b) if the multilateral negotiations referred to in Article 19.1 (Safeguard Measures) have not concluded within three years from entry into force of this Agreement, to enter into discussion on the question of emergency safeguard measures based on the principle of non-discrimination for the purpose of considering appropriate amendments to this Chapter;
- (c) to enter into discussions on the application of most-favoured-nation treatment to trade in services for the purpose of considering appropriate amendments to this Chapter, in conjunction with the first review of commitments under Article 6 (Review of Commitments);
- (d) to review the implementation of this Chapter;
- (e) to consider any other matters identified by the Parties; and
- (f) to report to the FTA Joint Committee as required.

3. The Services Committee shall conclude the discussions referred to in Paragraph 2(a) to (c) within five years of entry into force of this Agreement, unless the Parties agree otherwise.

4. The Services Committee shall meet as mutually determined by the Parties as required under this Article and Article 6 (Review of Commitments). Meetings may be conducted in person, or by any other means as mutually determined by the Parties.

