

Draft Trade in Services text from the PACER Plus Intersessional meeting in Port Vila, 31  
March -02 April 2015

6th Intersessional Meeting of PACER Plus Officials Port Vila, Vanuatu, 31 March to 2 April  
2014

### Chapter on Trade in Services

Clean copy draft text incorporating outcomes of the 6th Intersessional Meeting

#### NOTE:

This paper contains clean copy draft text incorporating outcomes of the 6th Intersessional Meeting of PACER Plus Officials.

Text that is not agreed is in square brackets and attributed as follows:

“AU:” for text tabled by Australia;–

“FIC:” for text tabled by OCTA/FICs; and–

“NZ:” for text tabled by New Zealand.–

Text that is not agreed is as follows:

blue for text tabled by Australia;–

red for text tabled by OCTA/FICs; and–

olive green for text tabled by New Zealand.–

CHAPTER [...]  
TRADE IN SERVICES

Article 1  
Definitions

1. 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repair and maintenance services means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance;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) airport operation 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;

(c) commercial presence means any type of business or professional establishment, including one operating through:

- (i) the constitution, acquisition or maintenance of an enterprise; 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;

(d) 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;

(e) enterprise means any entity 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, association, or similar organisation, and a branch of an enterprise;

(f) enterprise of a Party means an enterprise which is either:

- (i) organised or constituted under the law of that Party; [AU/FIC: and is engaged in substantive business operations in the territory of that Party or any other Party;] or
- (ii) in the case of the supply of a service through commercial presence, owned or controlled by:
  - (AA) natural persons of that Party; or

(BB) an enterprise of that Party identified under Subparagraph (i);  
[FIC: and which has its seat in that Party and engages in substantive business operations there;]

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

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

(i) measures adopted or maintained by a Party means any measure taken by:

- (i) central, regional or local Government and authorities; or
- (ii) non-governmental bodies in the exercise of powers delegated by central, state, regional or local Governments or authorities;

Such measures 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 a Party to be offered to the public generally; and
- (iii) the presence, including commercial presence, of persons of a Party for the supply of a service in the territory of another Party;

(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 under the law of that Party is a national of that Party or a permanent resident of that Party;

(l) person means either a natural person or an enterprise;

- (m) 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 Schedule of Specific Services Commitments at Annex [...] to this Agreement;
  - (ii) otherwise, the whole of that service sector, including all of its subsectors;
- (n) 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;
- (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 consumer means any person that receives or uses a service;
- [NZ/AU: (q) service supplier of a Party means a person of a Party that supplies, or seeks to supply, a service<sup>1</sup>;
- [FIC: (q) service supplier of a Party means a person of a Party that supplies a service;]
- (r) services includes any service in any sector except services supplied in the exercise of governmental authority;
- (s) services 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;
- (t) specialty air services means any non-transportation air services such as aerial firefighting, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, and helicopter-lift for
- <sup>1</sup>Where the service is not supplied directly by an enterprise but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e., enterprise) 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.

logging and construction, and other airborne agricultural, industrial, and inspection services;

(u) supply of a service includes the production, distribution, marketing, sale and delivery of a service;

(v) trade in services means the supply of a service:

(i) from the territory of one Party into the territory of another Party ('Mode 1');

(ii) in the territory of one Party to the service consumer of another Party ('Mode 2');

(iii) by a service supplier of one Party, through commercial presence in the territory of another Party ('Mode 3');

(iv) by a service supplier of one Party, through presence of natural persons of a Party in the territory of another Party ('Mode 4');

(w) traffic rights means the right for scheduled and non-scheduled services to operate and/or carry passengers, cargo and mail for remuneration or hire from, to, within, or over the territory of a Party, including points to be served, routes to be operated, types of traffic to be carried, capacity to be provided, tariffs to be charged and their conditions, and criteria for designation of airlines, including such criteria as number, ownership, and control.

## Article 2 Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party affecting trade in services.

2. This Chapter shall not apply to:

(a) services supplied in the exercise of governmental authority;

(b) any measures by a Party with respect to government procurement;

(c) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance, 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, except to the extent provided in Article [NZ: 12] [AU: 13] [FIC: 16] (Subsidies);

(e) 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;
- (iii) computer reservation system services;
- (iv) specialty air services;
- (v) ground handling services; and
- (vi) airport operation services.

[AU/FIC: 3. For greater certainty, the Parties recognise the right of all Parties to regulate and to introduce new regulations to regulate the supply of services within their territory in order to meet national policy objectives, provided that such regulation is not inconsistent with this Chapter. [FIC: Nothing in this Chapter shall be construed as requiring the privatisation of public undertakings or preventing any Party from supplying public services. 2]]

4. 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 3 Most-Favoured Nation Treatment

1. With respect to any measure covered by this Chapter, each Party shall accord immediately and unconditionally to services and service suppliers of another Party treatment no less favourable than that it accords to like services and service suppliers of a third party.

2. A Party may maintain a measure inconsistent with Paragraph 1 provided that such a measure falls within the scope of any exemptions lists in Annex [...] on Exemptions.]

[FICs: 3. The developing country Parties may adopt or maintain any measure that accords differential treatment among themselves either collectively or otherwise or to other developing countries pursuant to a bilateral or regional trade in force or signed after the date of entry into force of this Agreement, provided that the share of the country or countries involved in international services trade do not exceed [...%]]

2 Public services include the following: law enforcement, correctional services, pension or unemployment insurance or social security services, income security or insurance, social security or insurance, social welfare, public education, public training, health and child protection.

[FIC/AU: Article 4  
Increasing the Participation of Forum Island Countries

1. The increasing participation of Forum Island Countries in services trade shall be facilitated through negotiated specific commitments pursuant to Article [AU/FIC: 5] (Market Access), Article [AU/FIC: 6] (National Treatment), Article [AU/FIC: 7] (Additional Commitments) and Article [AU: 15][FIC: 19] (Negotiation of Specific Commitment) relating to:
  - (a) the strengthening of their domestic services capacity and its efficiency and competitiveness [AU: inter alia through [FIC: improved] access to technology on a commercial basis];
  - (b) the improvement of their access to distribution channels and information networks; and
  - (c) the liberalisation of market access in sectors and modes of supply of export interest to them.
  
2. The Parties shall establish contact points within one year from the date of entry into force of this Agreement to facilitate access of service suppliers to information, related to their respective markets, concerning:
  - (a) commercial and technical aspects of the supply of services;
  - (b) registration, recognition, and obtaining of professional qualifications; and
  - (c) the availability of services technology.]

Article [NZ: 4] [AU/FIC: 5]  
Market Access

1. With respect to market access through the modes of supply identified in the definition of “trade in services” in Article 1, each Party shall accord services and service suppliers of another Party treatment no less favourable than that provided for under the terms, limitations and conditions specified in its Schedule of Specific Services Commitments at Annex [...] to this Agreement (Schedule).
  
2. In the 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, are defined as:

- (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement 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 except measures of a Party which limit inputs for the supply of services;
- (d) limitations on the total number of natural persons who may be employed in a particular service sector or whom 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 except measures of a Party which limit inputs for the supply of services;
- (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 of the total value of individual or aggregate foreign investment.

3. If a Party undertakes a market access commitment in relation to the supply of a service through the mode of supply referred to in Article 1(v)(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.

4. If a Party undertakes a market access commitment in relation to the supply of a service through the mode of supply referred to in Article 1(v)(iii) (Definitions), it is thereby committed to allow related transfers of capital into its territory.

Article [NZ: 5] [AU/FIC: 6]  
National Treatment

1. In the sectors specified in its Schedule of Specific Services Commitments at Annex [...] to this Agreement (Schedule), and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of another 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 in Paragraph 1 by according to services and service suppliers of another Party either formally identical treatment or formally different treatment to that which 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 one Party compared to the like service or service suppliers of another Party.

4. 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 [NZ: 6] [AU/FIC: 7]

#### Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Article [NZ: 4] [AU/FIC: 5] (Market Access) and Article [NZ: 5] [AU/FIC: 6] (National Treatment), including those regarding qualifications, standards or licensing matters. Such commitments shall be entered in a Party's Schedule of Specific Services Commitments at Annex [...] to this Agreement (Schedule).

Article [NZ: 7] [AU/FIC: 8]

#### Specific Commitments

1. The specific commitments undertaken by each Party under Articles [NZ: 4] [AU/FIC: 5] and [NZ: 5] [AU/FIC: 6] shall be set out in the Schedule of Specific Services Commitments at Annex [...] to this Agreement. 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 related to additional commitments; and
- (d) where appropriate, the time-frame for implementation of such commitments.

2. Measures inconsistent with both Article [NZ: 4] [AU/FIC: 5] (Market Access) and Article [NZ: 5] [AU/FIC: 6] (National Treatment) are inscribed in the column relating to [NZ: 4] [AU/FIC: 5]. In this case, the inscription shall be considered to also provide a condition or qualification to Article [NZ: 5] [AU/FIC: 6].

Article [NZ: 8] [AU/FIC: 9]  
Domestic Regulation

1. [FIC/AU: In sectors where specific commitments are undertaken, each] [NZ: Each] Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

2. (a) Each Party shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures [FIC/AU: , which provide, at the request of an affected service supplier,] for the purpose of the prompt review, and, where warranted, [FIC/AU: appropriate remedies for, administrative decisions affecting trade in services, including] correction of [FIC/AU: the contested] final administrative actions. Where such tribunals or procedures are not independent of the agency entrusted with the administrative action concerned, the Party shall ensure that the tribunals or procedures provide for an objective and impartial review.

(b) Each Party shall ensure that, in any such tribunal or under any such procedures referred to in Subparagraph 2(a), the parties to any proceedings are provided with the right to:

- (i) reasonable opportunity to support or defend their respective positions; and
- (ii) a decision in accordance with the Party's laws.

(c) Each Party shall ensure, subject to appeal or further review as provided in its law, that any decision referred to in Subparagraph 2(b) shall be implemented in accordance with its laws.

(d) The provisions of Subparagraph 2(a) 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.

3. With a view to ensuring that any measure maintained or adopted by a Party relating to qualification requirements and procedures, technical standards and licensing requirements does not constitute unnecessary barriers to trade in services, while recognising the right to regulate and to introduce new regulations on the supply of services in order to meet its policy objectives, each Party shall ensure that, in sectors where specific commitments are undertaken, any such measure is:

- (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.

4. In determining whether a Party is in conformity with its obligations under Paragraph 3, account shall be taken of international standards of relevant international organisations applied by that Party.[FICs;<sup>3</sup> However, nothing in this Article would not require a Party to amend its laws relating to land ownership, trading hours and other practices unique to a Party.]

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, [FIC: within a reasonable period of time][AU/NZ: without undue delay], information concerning the status of the application under consideration; and

(d) if an application is rejected, to the maximum extent possible, inform the applicant in writing, and without [FIC: unreasonable] delay, the reasons for the rejection of the application and of the timeframe to appeal against the decision. An applicant should be permitted, within reasonable time limits, to resubmit an application.

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

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.

<sup>3</sup> The term "relevant international organizations" refers to international bodies whose membership is open to the relevant bodies of at least all Members of the WTO.

[FICs: Article 10  
Regulatory Reform

1. The Parties recognise that the establishment of appropriate regulatory regimes for services sectors is a prerequisite for their successful liberalisation.
2. Where a developing country Party does not have an appropriate regulatory regime in place for any service sector and/or the capacity to effectively implement and enforce that regime at the time of the entry into force of this Chapter, that Party may delay giving effect to any specific commitment it has made in relation to any such sector under this Chapter until such time it puts in place an adequate regulatory regime and acquires the capacity to implement and enforce the new regime, but in no case for more than 24 months after the date of entry into force of this Chapter.
3. Any restrictions adopted or maintained under Paragraph 2 or any changes to such restrictions shall be notified promptly to the Parties.
4. Any Party that delays giving effect to any specific commitment under Paragraph 2 shall take all reasonable steps to fulfil its obligations taking into account its economic, social and environmental characteristics.
5. The Parties agree to cooperate to establish and strengthen appropriate regulatory regimes for services sectors, including, where appropriate, regional initiatives.]

Article [NZ: 9] [AU: 10] [FIC: 11]  
Recognition

1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing or certification of service suppliers, and subject to the requirements of Paragraph 4, a Party may recognise the education or experience obtained, requirements met, or licenses 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. Where 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 3 (Most-Favoured Nation Treatment) shall be construed to require the Party to accord such recognition to the education or experience obtained requirements met, or licences or certifications granted in the territory of another Party.
3. 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 another Party to demonstrate that education, experience, licenses, or certifications obtained or requirements met in that other Party's territory should be recognised.

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

5. Where appropriate, recognition should be based on multilaterally [FIC: or regionally] 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. [FIC: The Parties shall encourage their professional accreditation bodies to consult with each other and with regional bodies such as the South Pacific Board of Education Authority with a view to commencing work on recognition of qualifications within two years of the entry into force of this agreement.]

Article [NZ: 10] [AU: 11] [FIC: 12]  
Payments and Transfers

1. A Party shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments.

[FIC: 2. Notwithstanding the provisions of Paragraph 1, a developing country Party may be able to impose restrictions to safeguard its balance of payments, especially where large transfers and payments are to be made. In such circumstances, payments may be staggered over a reasonable period of time by the developing country Party.]

[AU/NZ: 2.][FIC: 3.] Nothing in this Chapter shall affect the rights and obligations of a Party as a Member of the International Monetary Fund under 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 at the request of the International Monetary Fund.

Article [NZ: 11] [AU: 12] [FIC: 13]  
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 (Most-Favoured-Nation Treatment), Article [NZ: 4] [AU/FIC: 5] (Market Access), Article [NZ: 5] [AU/FIC: 6] (National Treatment) and Article [NZ: 6] [AU/FIC: 7] (Additional Commitments).

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 another 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.

[FIC: Article 14 Emergency Safeguard Measures

1. In response to problematic market conditions in particular service sectors, the correction of structural problems within the market, or the threat of the disappearance of services sectors, a Party may adopt or maintain restrictions in sectors where it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments.

2. The restrictions referred to in Paragraph 1:

- (a) shall not discriminate among the Parties;
- (b) shall avoid unnecessary damage to the commercial, economic and financial interests of any other Parties;
- (c) shall not exceed those necessary to the deal with the circumstances described above;
- (d) shall be temporary and, where practical, be phased out progressively as the situation improves.

3. The restrictions adopted or maintained under Paragraph 1 or any changes to such restrictions shall be notified promptly to the Parties.

4. The Parties shall review periodically, and at least every five years, the operation of this Article with a view to considering its possible modification or elimination.]

[FIC: Article 15  
General and Security 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 any Party of measures:

- (a) necessary to protect public morals or to maintain public order;
- (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 6, provided the difference in treatment is aimed at ensuring the equitable or effective imposition or collection of direct taxes in respect of services or service suppliers of other Parties;
- (e) inconsistent with Article 3, provided the difference in treatment is the result of an agreement on the avoidance of double taxation in any other international agreement or arrangement by which the Party is bound.

2. The public order exception in Paragraph 1 (a) may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

3. For the purposes of Paragraph (1) (d), 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:

- (a) 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
- (b) apply to non-residents in order to ensure the imposition or collection of taxes in the Party's territory; or

- (c) apply to non-residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or
- (d) apply to consumers of services supplied in or from the territory of another Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Party's territory; or
- (e) distinguish services supplied 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
- (f) 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.

4. Tax terms or concepts in Subparagraphs 1(d) and (e) and in Paragraph (3) 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.

5. Nothing in this Chapter shall be construed:

- (a) to require any Party to furnish any information, the disclosure of which it considers contrary to its essential security interests; or
- (b) to prevent any 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 material from which they are derived;
  - (iii) taken in time of war or other emergency in international relations;
- (c) to prevent any Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

6. The Parties shall be informed to the fullest extent possible of measures taken under Paragraphs 5(b) and (c) and of their terminations.]

Article [NZ: 12] [AU: 13] [FIC: 16]  
Subsidies

[FIC: 1. Subject to Paragraph 2, nothing in this Chapter shall prevent a Party from providing subsidies to its domestic service suppliers.]

[AU/NZ: 1.][FIC: 2.]: The Parties agree to consult where one Party considers that subsidies provided by another Party affecting trade in services nullify or impair any benefits it expected to receive under this Chapter with a view to reaching a mutually satisfactory solution.

[AU: 2.][FIC: 3.] The Parties agree to review the operation of this Article, following the conclusion of the negotiations on trade distorting subsidies on trade in services under Article XIV of the General Agreement on Trade in Services, with a view to considering the possible modification or elimination of this Article.]

Article [NZ: 13] [AU: 14] [FIC: 17]  
Denial of Benefits

1. A Party may deny the benefits of this Chapter to a service supplier of another Party where the Party establishes that:
  - (a) the service is being supplied by an enterprise that is owned or controlled by persons of a non-Party and the enterprise has no substantive business operations in the territory of any Party; or
  - (b) the service is being supplied by an enterprise that is owned or controlled by persons of the denying Party and the enterprise has no substantive business operations in the territory of any Party.

Article [NZ: 14] [AU: 15] [FIC: 18]  
Contact Points and Transparency

1. Each Party shall designate a contact point to facilitate communications between the Parties on any matter covered by this Chapter, and shall provide details of such contact point to the other Parties. The Parties shall notify each other promptly of any amendments to the details of their contact points.
2. Each Party shall publish promptly or otherwise make publicly available international agreements pertaining to or affecting trade in services to which it is a signatory.
3. Each Party shall ensure that all measures of general application relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards are published promptly through printed or electronic means,

or otherwise. Information regarding these measures shall include, inter alia, the following, where applicable:

- (a) requirements for authorisation, including for application and periodic renewal of such authorisation, and generally applicable terms and conditions of such authorisation;
- (b) licensing requirements and procedures, including requirements, criteria and procedures for application and renewal, and applicable fees;
- (c) qualification requirements and procedures, including requirements, criteria and procedures for application and renewal, and procedures for verification and assessment of qualifications, and applicable fees;
- (d) technical standards;
- (e) procedures relating to appeals or reviews of decisions concerning applications;
- (f) procedures for monitoring or enforcing compliance with the terms and conditions of licences;
- (g) established timeframe for processing of an application.

4. Each Party shall respond promptly to all requests by another Party for specific information on any measures of general application which pertain to or affect the operation of this Chapter or international agreements within the meaning of Paragraph 2.

Article [NZ: 15] [AU: 16] [FIC: 19]  
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 Parties, with a view to further improving specific commitments under this Chapter so as to progressively liberalise trade in services among the Parties. [AU: The circumstances of developing country Parties will be taken into account in any successive round of negotiations that are undertaken] [FIC: There shall be appropriate flexibility for individual developing country Members for opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation and, when making access to their markets available to foreign service suppliers, attaching to such access conditions aimed at achieving the objectives referred to in Article 4.]

Article [NZ: 16] [AU: 17] [FIC: 20]  
Joint Committee

The Parties shall, through the Joint Committee or a relevant subsidiary body, consult regularly to consider the implementation of their commitments under this Chapter.