

บรรณานุกรม

ภาษาไทย

กฎหมาย

พระราชบัญญัติการเดินอากาศ พ.ศ. 2497

ประกาศคณะปฏิวัติ ฉบับที่ 58

ประกาศคณะปฏิวัติ ฉบับที่ 281

พระราชบัญญัติโทรเลข โทรศัพท พ.ศ. 2477

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ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย

ภาคผนวก

DRAFT FINAL ACT EMBODYING THE RESULTS OF THE  
URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS

This document is being tabled by the Chairman of the Trade Negotiations Committee at Official Level with the following understanding:

- (a) It offers a concrete and comprehensive representation of the final global package of the results of the Uruguay Round:
- (b) No single element of the Draft final Act can be considered as agreed till the total package is agreed;
- (c) Final agreement on the attached Draft Final Act will depend on substantial and meaningful results for all parties being achieved in the ongoing market access negotiations, including those related to tariffs and non-tariff measures: this applies to areas such as natural resource-based products, tropical products, agriculture and textiles and clothing.
- (d) Final agreement similarly applies to the ongoing negotiations pertaining to initial liberalization commitments in the area of services.

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A. DRAFT FINAL ACT EMBODYING THE RESULTS OF THE  
URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS

1. Having met ..... from ..... to ..... 19.. at Multilateral Trade Negotiations, the representatives of the Governments and of the European Communities, members of the Trade Negotiations Committee (hereinafter referred to as "participants"), agree that the Agreements Decisions and understandings, as set out in the annexes attached hereto 1 (hereinafter referred to as "instruments"), embody the results of their negotiations and form an integral part of this Final Act.

2. By adopting the present Final Act, participants agree to submit, as appropriate, the annexed instruments for the consideration of their respective competent authorities with a view to seeking approval of these instruments in accordance with appropriate procedures of the participant concerned.

3. Participants agree on the desirability of acceptance of the instruments by all participants with a view to their entry into force as early as possible and not later than [1 January 1993]. Participants further agree, in order to provide the administrative infrastructure for the international implementation of the Uruguay Round results, to establish a Multilateral Trade Organization. Pursuant to the final paragraph of the Punta del Este Declaration, Ministers will meet in a Special Session of the CONTRACTING PARTIES to decide on the international implementation of the results not later than the end of [1992]. Subsequently, and taking into account the status of domestic ratification efforts, they shall meet prior to the end of [1992] to decide the timing instruments' entry into force.

4. Participants agree on the desirability of the application by the contracting parties, as from the date of entry into force of the Uruguay Round results, of the General Agreement on Tariffs and Trade on a definitive rather than on a provisional basis.

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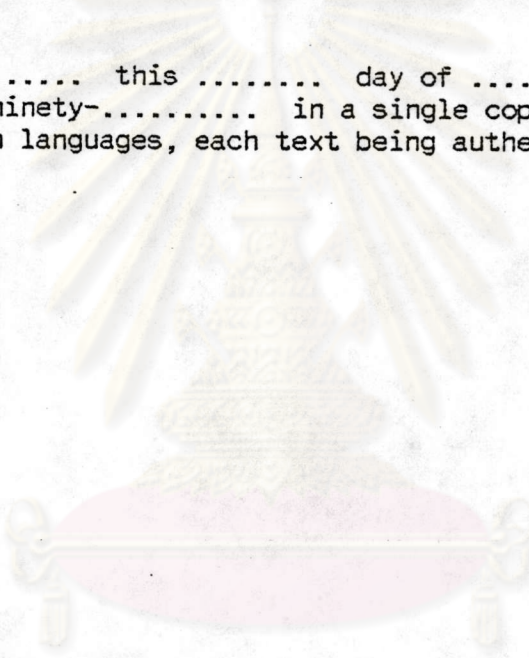
1

Ministers agreed at the Mid-Term Review that the negotiations on Trade-Related Aspects of Intellectual Property Rights are without prejudice to the views of participants concerning the institutional aspects of the international implementation of the results of the negotiations in this area which is to be decided pursuant to the final paragraph of the Punta del Este Declaration, i.e. by Ministers meeting at a Special Session of the CONTRACTING PARTIES.

5. Participants agree that the instruments shall be open for acceptance as a whole, by signature or otherwise, by all participants in the Uruguay Round of Multilateral Trade Negotiations. This is without prejudice to the requirement that such participants who are not contracting parties to the GATT must negotiate their terms of accession to the GATT.

6. This final Act and the texts of the instruments set out in the Annexes shall be deposited with the Director-General Agreement on Tariffs and Trade who shall promptly furnish to each participant in the Uruguay Round of Multilateral Trade Negotiations a certified copy thereof.

DONE at ..... this ..... day of ..... one thousand nine hundred and ninety-..... in a single copy, in the English, French and Spanish languages, each text being authentic.



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TRADE IN SERVICES(Annex II)

General Agreement on Trade in Services

Articles I-XXXV

Annex on Article II Exemptions

Annex on Movement of Natural Persons providing Services under the Agreement

Annex on Financial Services

Annex on Telecommunications

Annex on Air Transport Services

Other Documents

Ministerial Decision on Institutional Arrangements

Ministerial Decision on Certain Dispute Settlement Procedures

Decision concerning Article XIV(b)

Understanding on Commitments in Financial Services

Substantive Guidelines for the Negotiation of INITIAL COMMITMENTS during the Uruguay Round

GENERAL AGREEMENT ON TRADE IN SERVICE

Articles of Agreement

Articles I-XXXV

Annexes

Most-favoured-nation exemption procedures

Annex on Article II Exemptions

Annex on Movement of Natural Persons providing Services under  
the Agreement

Annex on Financial Services

Annex on Telecommunications

Annex on Air Transport Services

Decision and Understandings

Ministerial Decision on Institutional Arrangements

Ministerial Decision on Certain Dispute Settlement Procedures

Decision concerning Article XIV(b)

Understanding on Commitments in Financial Services

Attachment

Substantive Guidelines for the Negotiation of Initial Commitments  
during the Uruguay Round



Part III      SPECIFIC COMMITMENTS

- Article XVI      Market Access  
Article XVII      National Treatment  
Article XVIII      Additional Commitments

Part IV      PROGRESSIVE LIBERALIZATION

- Article XIX      Negotiation of Commitments  
Article XX      Schedule of Commitments  
Article XXI      Modification of Schedules

Part V      INSTITUTIONAL PROVISIONS

- Article XXII      Consultation  
Article XXIII      Dispute Settlement and Enforcement  
Article XXIV      Joint Action  
Article XXV      Council  
Article XXVI      Technical Cooperation  
Article XXVII      Relationship with Other International  
Organizations

Part VI      FINAL PROVISIONS

- Article XXVIII      Acceptance and Accession  
Article XXIX      Entry into Force  
Article XXX      Non-Application  
Article XXXI      Denial of Benefits  
Article XXXII      Amendments  
Article XXXIII      Withdrawal  
Article XXXIV      Definitions  
Article XXXV      Annexes

PREAMBLE

This Parties to this Agreement,

Recognizing the growing importance of trade in services for the growth and development of the world economy;

Wishing to establish a multilateral framework of principles and rules for trade in services with a view to the expansion of such trade under conditions of transparency and progressive liberalization and a means of promoting the economic growth of all trading partners and the development of developing countries;

Desiring the early achievement of progressively higher levels of liberalization of trade in services through successive rounds of multilateral negotiations aimed at promoting the interests of all participants on a mutually advantageous basis and at securing an overall balance of rights and obligations, while giving due respect to national policy objectives;

Recognizing the right of Parties to regulate, and to introduce new regulations, on the supply of services within their territories in order to meet national policy objectives, and given asymmetries existing with respect to the degree of development of services regulations in different countries, the particular need of developing countries to exercise this right;

Desiring to facilitate the increasing participation of developing countries in international trade in services and the expansion of their service exports including, inter alia, through the strengthening of their domestic services capacity and its efficiency and competitiveness;

Taking particular account of the serious difficulty of the least developed countries in view of their special economic situation and their development, trade and financial needs;

Hereby agree as follows:

PART I

SCOPE AND DEFINITION

Article I

Scope and Definition

1. This Agreement applies to measures by Parties affecting trade in services.

2. For the purpose of this Agreement, trade in services is defined as the supply of a service:

- (a) from the territory of one Party into the territory of any other Party;
- (b) in the territory of one Party to the service consumer of any other Party;
- (c) through the presence of service providing entities of one Party in the territory of any other Party;
- (d) by natural persons of one Party in the territory of any other Party.

3. For the purpose of this Agreement :

"measure by Parties" means measures taken by :

- (i) central, regional or local governments and authorities; and
- (ii) non-governmental bodies in the exercise of power delegated by central, regional or local governments or authorities;

In fulfilling its obligations and commitments under the Agreement, 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.

- (b) "services" includes any service in any sector except services supplied in the exercise of governmental function.\*



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\*The terms of the exclusion of services supplied in the exercise of governmental functions will be reviewed in the context of the work on Article XXXIV.

PART II

GENERAL OBLIGATIONS AND DISCIPLINES

Article II

Most-Favoured-Nation Treatment

1. With respect to any measure covered by this Agreement, each Party shall accord immediately and unconditionally to services and service providers of any other Party, treatment no less favourable than that it accords to like services providers of any other country.\*
2. A Party may maintain a measure inconsistent with paragraph 1 provided that it is listed in, and meets the conditions of, the Annex on Article II Exemptions.
3. The provisions of this Agreement shall not be so construed as to prevent any Party from conferring or according advantage to adjacent countries in order to facilitate exchange limited to contiguous frontier zones of services that are both locally produced and consumed.

Article III

Transparency

1. Each Party shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant laws, regulations, administrative guidelines and all other decisions, rulings, or measures of general application, whether made effective by national or sub-national government bodies or by a non-governmental regulatory entity, which pertain to or affect the operation of this Agreement. International agreements pertaining to or affecting trade in services to which a Party to this Agreement is a signatory shall also be published.
2. Where publication as referred to in paragraph 1 is not practicable, such information shall be made otherwise publicly available.

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\*The provisions of this Article do not apply to measure taken under international agreements on juridical and/or administrative assistance.



3. Each Party shall promptly inform the PARTIES at least annually of the introduction of any new, or any changes to existing, laws, regulations or administrative guidelines which significantly affect trade in services covered by its specific commitments under this Agreement.

4. Each Party shall respond promptly to all requests for specific information, by other Parties, on any of its laws, regulations, administrative guidelines or any other decisions, rulings, measures of general application or international agreements within the meaning of paragraph 1. Each Party shall also establish one or more enquiry points to provide specific information to other Parties, upon request, on all such matters as well as those subject to the notification requirement in paragraph 3. Such enquiry points shall be established within two years from the entry into force of the Agreement. Appropriate flexibility with respect to the time-limit within which such enquiry points are to be established may be agreed upon for individual developing countries. Enquiry points need not be depositories of laws and regulations.

5. Any Party may notify to the PARTIES any measure, taken by another Party, which it considers affects the operation of this Agreement.

#### Article III bis

##### Disclosure of Confidential Information

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

#### Article IV

##### Increasing Participation of Developing Countries

1. The increasing participation of developing countries in world trade shall be facilitated through negotiated specific commitments by different Parties pursuant to Parts III and IV of this Agreement relating to:

- (a) the strengthening of their domestic services capacity and its efficiency and competitiveness inter alia through access to technology on a commercial basis:

either at the entry into force of that agreement or on the basis of a reasonable time-frame, except for measures permitted under Articles XI, XII and XIV.

2. In evaluating whether the conditions under paragraph 1(b) are met, consideration may be given to the relationship of the agreement to a wider process of economic integration or trade liberalization among the countries concerned.
3. Where developing countries are parties to an agreement of the type referred to in paragraph 1, flexibility shall be provided for regarding the conditions set out in paragraph 1, in particular sub-paragraph (b), in accordance with the level of development of the countries concerned, both overall and in individual sectors and sub-sectors.
4. Any agreement referred to in paragraph 1 shall be designed to facilitate trade between the parties to the agreement and shall not in respect of any Party outside the agreement raise the overall level of barriers to trade in services within the respective sectors of sub-sectors compared to the level applicable prior to such an agreement.
5. If, in the conclusion, enlargement or any significant modification of any agreement under paragraph 1, a Party intends to withdraw or modify a commitment inconsistently with the terms and conditions set out in its schedule, it shall provide at least 90 days advance notice of such modification or withdrawal and the procedure set forth in Article XXI:2-4 shall apply.
6. (a) A service supplier of any other Party that is a juridical person constituted under the laws of a party to an agreement referred to in paragraph 1 shall be entitled to treatment granted under such agreement, provided that it engages in substantive business operations in the territory of the parties to such agreement.
  - (b) The Party may refuse to grant the treatment referred to in sub-paragraph 1 above, if:
    - (i) the service supplier was not established in the territory of a party to such agreement prior to signature of the agreement: and
    - (ii) the parties to such agreement do not provide common treatment to third countries with respect to the sector or sub-sector concerned.

- 7 (a) Parties to this Agreement which are parties to any agreement referred to in paragraph 1 shall promptly notify any such agreement and any enlargement or any significant modification thereto to the PARTIES. They shall also make available to the PARTIES such relevant information as may be requested by the PARTIES. PARTIES may establish a working party to examine such an agreement or enlargement or modification thereto and report to the PARTIES on its consistency with this Article.
- (b) Parties to this Agreement which are parties to any agreement referred to in paragraph 1 which is implemented on the basis of a time-frame shall report periodically to the PARTIES on its implementation. The PARTIES may establish a working party to examine such reports if they deem it necessary.
- (c) Based on the reports of the working parties referred to in paragraph 7(a) and 7 (b), the PARTIES may make recommendations to the parties as they deem appropriate.
8. A party to any agreement referred to in paragraph 1 may not seek compensation for trade benefits that may accrue to any other Party from such agreement.

#### Article VI

##### Domestic Regulation

1. In sectors or subsectors 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. (a) Each Party shall maintain or institute as soon as practicable judicial, arbitrable or administrative tribunals or procedures which provide, at the request of an affected service provider, for the prompt review of, and where justified, appropriate remedies for, administrative decisions relating to the supply of services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that they do in fact provide for an objective and impartial review.
- (b) The provisions of subparagraph (a) shall not require a Party to institute such tribunals or procedure where this would be inconsistent with its constitutional structure or the nature of its legal system.

- 7 (a) Parties to this Agreement which are parties to any agreement referred to in paragraph 1 shall promptly notify any such agreement and any enlargement or any significant modification thereto to the PARTIES. They shall also make available to the PARTIES such relevant information as may be requested by the PARTIES. PARTIES may establish a working party to examine such an agreement or enlargement or modification thereto and report to the PARTIES on its consistency with this Article.
- (b) Parties to this Agreement which are parties to any agreement referred to in paragraph 1 which is implemented on the basis of a time-frame shall report periodically to the PARTIES on its implementation. The PARTIES may establish a working party to examine such reports if they deem it necessary.
- (c) Based on the reports of the working parties referred to in paragraph 7(a) and 7 (b), the PARTIES may make recommendations to the parties as they deem appropriate.
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- (b) The provisions of subparagraph (a) shall not require a Party to institute such tribunals or procedure where this would be inconsistent with its constitutional structure or the nature of its legal system.

3. Where authorization is required for the provision of a service on which a specific commitment has been made, the competent authorities of a Party shall, 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. At the request of the applicant, the competent authorities of the Party shall provide, without undue delay, information concerning the status of the application.

4. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade, the PARTIES shall, through appropriate bodies they may establish, develop any necessary disciplines. Such disciplines shall aim to ensure that such requirements are, inter alia:

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

5. (a) In sectors or subsectors in which a Party has undertaken specific commitments in accordance with Articles XVI and XVII of this Agreement, pending the entry into force of disciplines developed in these sectors or subsectors pursuant to paragraph 4, the Party shall not apply licensing and qualification requirements and technical standards that nullify or impair such commitments in a manner which:

- (i) does not comply with the criteria outlined in subparagraphs 4(a), (b) or (c); and
  - (ii) could not reasonable have been expected of that Party at the time the commitments in those sectors or subsectors were made.
- (b) In determining whether a Party is in conformity with the obligation under Paragraph 5(a) above, account shall be taken of international standards of relevant international organizations\* applied by that Party.

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\*The term "relevant international organization" refers to international bodies whose membership is open to the relevant bodies of at least all Parties to this Agreement.

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

## Article VII

### Recognition

1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorization, licensing or certification of services providers, and subject to the requirements of paragraph 3 below, a Party may recognize the education or experience obtained, requirements met, or licenses or certifications granted in a particular country. Such recognition which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.

2. A Party to such an agreement or arrangement, whether future or existing, shall afford adequate opportunity for other interested Parties to negotiate their accession to such agreements or arrangements or to negotiate comparable ones with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for other Parties to demonstrate that education, experience, licenses, or certifications obtained or requirements met in their territories should be recognized.

3. A Party shall not accord recognition in a manner which would constitute a means of discrimination between countries in the application of its standards or criteria for the authorization, licensing or certification of services providers, or disguised restriction on trade in services.

4. Each Party shall:

- (a) within 12 months from the entry into force of this Agreement, or its accession thereto, inform the PARTIES of its existing recognition measures and state whether such measures are based on agreements or arrangements of the type referred to in paragraph 1;
- (b) promptly inform the PARTIES as far in advance as possible of the opening of negotiations on such agreements or arrangements in order to provide adequate opportunity to other Parties to indicate their interest in participating in the negotiations before they enter a substantive phase;

- (c) promptly from the PARTIES when it adopts new recognition measures or significantly modifies existing ones and state whether the measures are based on such agreements or arrangements.

5. Wherever appropriate, recognition should be based on multilaterally agreed criteria. In appropriate cases, Parties shall work in co-operation with relevant intergovernmental and non-governmental organizations 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.

### Article VIII

#### Monopolies and Exclusive Service Providers\*

1. Each Party shall ensure that any monopoly provider 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 II and specific commitments under Part III of this Agreement.
2. Where a Party's monopoly provider competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly right and which is subject to that Party's specific commitments under this Agreement, the Party shall ensure that such a provider does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.
3. The PARTIES may, at the request of a Party which has a reason to believe that a monopoly provider of a service of another Party is acting in a manner inconsistent with paragraph 1 or 2 above, request the Party establishing, maintaining or authorizing such entity to provide specific information concerning the relevant operations.
4. If, after the entry into force of this Agreement, a Party grants monopoly rights regarding the provisions of a service covered by its specific commitments under this Agreement, that Party shall make such notification to the PARTIES no later than three months before the intended implementation of the grant of monopoly rights and the provisions of paragraph 2, 3 and 4 of Article XXI shall apply.

\*Nothing in this Agreement condemns or condones the creation or maintenance of monopoly service providers

5. The provisions of this Article shall also apply to cases where a Party, formally or in effect, (a) authorizes or establishes a small number of service providers and (b) substantially prevents competition among those providers in its territory.

### Article IX

#### Business Practices

1. Parties recognize that certain business practice of service providers, other than those falling under Article VIII, may restrain competition and thereby restrict trade in services.

2. Each Party shall, at the request of another 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 cooperate through the supply of publicly available non-confidential information of relevance to the matter in question. The Party addressed shall also provide other information available to the Party, subject to its domestic law and to the conclusion of satisfactory agreement concerning the safeguarding of its confidentiality by the requesting party.

### Article X

#### Emergency Safeguards Measures

1. Within three years from the entry into force of the Agreement, multilateral negotiations on the question of emergency safeguard measures, based on the principle of non-discrimination, shall be completed and their results enter into force.

2. Meanwhile, the three-year delay in the ability of a Party to invoke Article XXI is changed to a one-year delay in a case where the Party invoking this provision can show cause to the PARTIES for not waiting the full three years. The other provisions of Article XXI would apply.

3. This provision shall end within the three years referred to in paragraph 1.



## Article XI

### Payments and Transfers

1. Except under the circumstances envisaged in Article XII, a Party shall not apply restrictions on international transfers and payments for current transactions relating to specific commitments under the Agreement.
2. Nothing in this Agreement shall affect the rights and obligations of the members of the International Monetary Fund under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its specific restrictions on any capital transactions inconsistently with its specific commitments under this Agreement regarding such transactions, except under Article XII or at the request of the Fund.

## Article XII

### Restrictions to Safeguard the Balance of Payments

1. In the event of serious balance-of-payments and external financial difficulties or threat thereof, a Party may adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments. It is recognized that particular pressures on the balance of payments of a Party in the process of economic development or economic transition may necessitate the use of restrictions to ensure, inter alia, the maintain of a level of financial reserves adequate for the implementation of its programme of economic development or economic transition.
2. The restrictions referred to in paragraph 1 above:
  - (a) shall not discriminate among Parties to the Agreement;
  - (b) shall be consistent with the Articles of Agreement of the IMF;
  - (c) shall avoid unnecessary damage to the commercial, economic and financial interests of other Parties;
  - (d) shall not exceed those necessary to deal with the circumstances described in paragraph 1;

- (e) shall be temporary and be phased out progressively as the situation specified in paragraph 1 improves.

3. In determining the incidence of such restrictions. Parties may give priority to the supply of services which are more essential to their economic or development programmes. However, such restrictions shall not be taken for the purpose of protecting a particular service sector.

4. Any restrictions adopted or maintained under paragraph 1 of this Article, or any changes therein, shall be promptly notified to the PARTIES.

5. (a) Parties applying the provisions of this Article shall consult promptly with the PARTIES on restrictions maintained under this Article.
- (b) The PARTIES shall establish procedures\* for periodic consultations with the objective of enabling such recommendations to be made to the Party concerned as they may deem appropriate.
- (c) Such consultations shall assess the balance of payment situation of the party concerned and the restrictions applied under this Article, taking into account, inter alia, such factors as:
- (i) the nature and extent of the balance-of-payments and the external financial difficulties;
  - (ii) the external economic and trading environment of the consulting party;
  - (iii) alternative corrective measures which may be available.
- (d) The consultations shall address the compliance of any restrictions with paragraph 2, in particular the progressive phase out of restrictions in accordance with paragraph 2(v).
- (e) In such consultations, the PARTIES shall accept all findings of statistical and other facts presented by the International Monetary Fund relating to foreign exchange, monetary reserves and balance of payments, and shall base their conclusions on the assessment by the Fund of the balance-of-payments and the external situation of the Party.

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\*It is understood that the procedures under paragraph 5 will draw on the GATT procedures as they emerge from the Uruguay Round.

6. If a Party which is not a member of the International Monetary Fund wishes to apply the provisions of this Article, the PARTIES will establish review and any other procedures necessary.

### Article XIII

#### Government Procurement

1. The provisions of Articles II, XVI and XVII shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale.
2. There shall be multilateral negotiations on government procurement in services under this Agreement within two years from the entry into force of the Agreement.

### Article XIV

#### General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on international trade in services, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Party 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 Agreement including those relating to:
  - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on service
  - (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 XVII, provided that the difference in treatment is aimed at ensuring the equitable or effective imposition or collection of taxes on income of service suppliers of other Parties that, under the Party's relevant tax measures, are not deemed to reside in the Party's territory;
- (e) inconsistent with Article II, provided that the difference in treatment is the result of an international agreement relating to the avoidance of double taxation to which the Party is a signatory.

Article XIV bis

Security Exceptions

1. Nothing in this Agreement 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 provision of services as carried out directly or indirectly for the purpose of provisioning a military establishment;
    - (ii) relating to fissionable and fusionable materials or the materials from which they are derived;
    - (iii) taken in time of war or other emergency in international relations; or
  - (c) The PARTIES shall be informed to the fullest extent possible of measures taken under paragraphs 1(b) and (c) and of their termination.

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\*Action under a public order exception is possible where genuine and sufficiently serious threats are posed to one of the fundamental interests of society.

Article XVSubsidies

1. Parties recognize that, in certain circumstances, subsidies may have distortive effects on trade in services. Parties shall enter into negotiations with a view to developing the necessary multilateral disciplines to avoid such trade distortive effects.\* The negotiations shall also address the appropriateness of countervailing procedures. Such negotiations shall recognize the role of subsidies in relation to the development programmes of developing countries and take into account the needs of Parties, particularly developing countries, for flexibility in this area. For the purpose of such negotiations, Parties shall exchange information concerning all subsidies related to trade in services that they provide to their domestic service providers.

2. 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 requests shall be accorded sympathetic consideration.

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\*A future work programme shall determine how and in what time-frame negotiations on the multilateral disciplines will be conducted.

PART IIISPECIFIC COMMITMENTSArticle XVIMarket Access

1. With respect to market access through the modes of supply identified in Article I, each Party shall accord services and service providers of other Parties treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its schedule.\*

2. In sectors or sub-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 providers whether in the form of numerical quotas, monopolies, exclusive service providers 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:\*\*\*

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\*If a Party undertake a market access commitment in relation to the supply of a service through the mode of supply referred to in paragraph 2(a) of Article I 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 paragraph 2(c) of Article I, it is thereby committed to allow related transfers of capital into its territory.

\*\*It is understood that all discriminatory measures can be challenged as a violation of Article XVII.

\*\*\*Sub-paragraph 2(c) does not cover measures of a Party which limit inputs for the supply of service.

- (d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service provider may employ and who are necessary for, and directly related to, the supply of a specific service 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 provide 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 XVII

### National Treatment

1. In the sectors or sub-sectors inscribed in its Schedule of Commitments, and subject to any conditions and qualifications set out therein, each Party shall accord to services and service providers 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 providers.\*

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

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 providers of the Party compared to like services or service providers of another Party.

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\*Commitments assumed under this Article shall not be construed to require any Party to compensate for any inherent competitive disadvantage which result from the foreign character of the relevant services or service providers.

## Article XVIII

### Additional Commitments

Parties may negotiate commitments with respect to measures affecting trade in service not subject to scheduling under Articles XVI or XVII including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Party's schedule.

## PART IV

### PROGRESSIVE LIBERALIZATION

## Article XIX

### Negotiation of Commitments

1. In pursuance of the objectives, of this Agreement, Parties shall enter into successive rounds of negotiations, beginning not later than(...) from the date of entry into force of this Agreement and periodically thereafter, with a view to achieving a progressively higher level of liberalization. Such negotiations shall be directed to the reduction or elimination of the adverse effects on trade in services of measures as a means of providing effective market access. This process shall take place with a view to promoting the interests of all participants on a mutually advantageous basis and to securing an overall balance of rights and obligations.
2. The process of liberalization shall take place with due respect for national policy objectives and the level of development of individual Parties, both overall and in individual sectors. There shall be appropriate flexibility for individual developing countries 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 providers attaching to it conditions aimed at achieving the objectives referred to in Article IV.
3. For each round, negotiating guidelines and procedures shall be established. For the purposes of establishing such guidelines, the PARTIES shall carry out an assessment of international trade in services in overall terms and on a sectoral basis with reference to the objectives of the Agreement, including those set out in Article IV:1. Negotiating guidelines shall establish modalities for the



treatment of liberalization undertaken autonomously by Parties since previous negotiations, as well as for the special treatment of the least-developed countries under the provisions of Article IV:3.

4. The process of progressive liberalization shall be advanced in each such round through bilateral, plurilateral or multilateral negotiations directed towards increasing the general level of specific commitments undertaken by Parties under this Agreement.

## Article XX

### Schedule of Commitments

1. Each Party shall set out in a schedule the specific commitments it undertakes under Part III of this Agreement. With respect to sectors and sub-sectors where such commitments are undertaken, each schedule shall specify:

- (a) commitments on market access;
- (b) commitments on national treatment;
- (c) undertakings relating to additional commitments;
- (d) where appropriate the time-frame for implementation of commitments; and
- (e) date of entry into force of commitments.

2. Measure inconsistent with both Article XVI and XVII shall be inscribed in the column relating to Article XVI (Market Access).

3. Schedules of specific commitments shall be annexed to this Agreement and form an integral part thereof.

## Article XXI

### Modification of Schedules\*

1. Any Party may, after a period of three years from the date a commitment enters into force, notify the PARTIES of its intention to modify or withdraw such a commitment included in its schedule. Such a

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\*It is agreed that a number of points for giving effect to this Article need to be elaborated.

Party shall make such notification to the PARTIES no later than three months before the intended implementation of the modification or withdrawal.

2. (a) At the request of any Party whose interests under this Agreement may be affected (hereafter "an affected Party") by a proposed modification or withdrawal notified under paragraph 1 the Party proposing to modify or withdraw the commitment (hereafter, the "modifying Party") shall enter into negotiations with a view to reaching agreement on any necessary compensatory adjustment.
  - (b) Compensation shall be on an m.f.n. basis.
3. (a) In the event an agreement cannot be reached at the end of the period provided for negotiations, any affected Party may refer the matter to arbitration. Any affected Party that wishes to enforce a right that it may have to compensative must participate in the arbitration.
  - (b) If no Party requests arbitration the modifying Party shall be free to implement the proposed modification.
4. (a) The modifying Party may not modify or withdraw its commitment until it makes compensatory adjustments in conformity with the arbitration panel's findings.
  - (b) If the modifying Party does not comply with sub-paragraph (a), and affected Party that participated in the arbitration may withdraw equivalent benefits in conformity with the arbitration panel's findings.

## PART V

### INSTITUTIONAL PROVISIONS

#### Article XXII

##### Consultation

1. Each Party shall accord sympathetic consideration to, and shall afford adequate opportunity for, consultation regarding such representations as may be made by another Party with respect to any matter affecting the operation of this Agreement.
2. The PARTIES may, at the request of a Party, consult with any Party or Parties in respect of any matter for which it has not been possible to find a satisfactory solution through consultation under paragraph 1.

3. A Party may not invoke Article XVII either under this Article or Article XXIII with respect to a measure of another Party that is subject to an international agreement relating to the avoidance of double taxation between the Parties containing a non-discrimination provision unless the Party has had recourse to the dispute settlement provisions of the convention and no satisfactory resolution of the dispute has been reached within a reasonable period of time.

### Article XXIII

#### Dispute Settlement and Enforcement\*

1. If any Party should consider that another Party fails to carry out its obligations or commitments under this Agreement, it may with a view to reaching a mutually satisfactory resolution of the matter, make written representations or proposals to the other Party or Parties which it considers to be concerned. Such action shall be promptly notified to the PARTIES. Any Party thus approached shall give sympathetic consideration to the representations or proposals made to it.

2. If no satisfactory solution is effected between the Parties concerned within a reasonable period of time, the matter may be referred to the PARTIES. The PARTIES shall promptly investigate any such matter referred to them and shall make appropriate recommendations to the Parties as well as any relevant inter-governmental organization in cases where they consider such consultations necessary.

3. If the PARTIES consider that the circumstances are serious enough to justify such action, they may authorize a Party or Parties to suspend the application to any other Party or Parties of such obligations and commitments under this Agreement as they determine to be appropriate in the circumstances.

4. If any Party considers that any benefit it could reasonably have expected to accrue to it under a specific commitment of another Party under Part III of this Agreement is being nullified or impaired as a result of the application of any measure which does not conflict with the provisions of this Agreement, it may resort to the procedures of Article XXII and Article XXIII, paragraph 1 and 2. If the measure is determined by the PARTIES to have nullified or impaired such a

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\*Procedures to be used for disputes under this Article may need to be co-ordinate with, and modified in the light of, procedures for dispute settlement in the GATS and for modification of schedules of commitments.

benefit, The Party affected shall be entitled to a mutually satisfactory adjustment on the basis of Article XXI, paragraph 2, which may include the modification or withdrawal Parties concerned, Article XXIII, paragraph 3 shall apply.

Article XXIV  
Joint Action

1. Representatives of the Parties shall meet as necessary for the purpose of giving effect to those provisions of the Agreement which involve joint action and, generally, with a view to facilitating the operation and furthering the objectives of this Agreement. Wherever reference is made in this Agreement to the Parties acting jointly, they are designated as the PARTIES.
2. Each Party shall be entitled to have one vote at all meetings of the PARTIES.
3. Except as otherwise provided for in this Agreement, decisions of the PARTIES shall be taken by a majority of the votes cast.
4. In exceptional circumstances not elsewhere provided for in this Agreement, the PARTIES may waive an obligation imposed upon a Party by this Agreement; provided that any such decision shall be approved by a two-thirds majority of the votes cast and that such majority shall comprise more than half of the Parties.
5. (a) A decision by the PARTIES granting a waiver shall state the exceptional circumstances justifying the decision, the terms and conditions governing the application of the waiver, and the date on which the waiver shall terminate.  
  
(b) Any waiver granted for a period of more than one year shall be reviewed by the PARTIES not later than one year after it was granted, and thereafter annually until the waiver terminates. In each review, the PARTIES shall examine whether the exceptional circumstances justifying the waiver still exist and whether the terms and conditions attached to the waiver have been met. The PARTIES, on the basis of the annual review, may extend, modify or terminate the waiver.

## Article XXV

### Council

1. The PARTIES shall establish a Council which will perform such functions as may be assigned by them to facilitate the operation of this Agreement and further its objectives. The Council may establish such subsidiary bodies as it considers appropriate for the effective discharge of its functions.
2. The Council and, unless the Council decides otherwise, its subsidiary bodies shall be open to participation by representatives of all Parties to this Agreement.
3. The Chairman of the Council shall be elected by the PARTIES. The Council shall establish its own rules of procedure.

## Article XXVI

### Technical Cooperation

1. Service providers of Parties which are in need of such assistance shall have access to the services of contact points referred to in paragraph 2 of Article IV.
2. Technical assistance to developing countries shall be provided at the multilateral level by the competent secretariat and shall be decided upon by the PARTIES.

## Article XXVII

### Relationship with Other International Organizations

The PARTIES shall make appropriate arrangements for consultation and cooperation with the United Nations and its specialized agencies as well as with other intergovernmental organizations concerned with services.

PART VI

FINAL PROVISIONS

Article XXVII

Acceptance and Accession

1. This Agreement shall be open for acceptance until (...) by the governments, and the European Communities, whose schedules are contained in Annex(...).
2. Any government which does not accept this Agreement pursuant to paragraph 1 may accede to it on terms to be agreed with the PARTIES. Decisions of the PARTIES under this paragraph shall be taken by a two-thirds majority.
3. For the purposes of paragraph 2 and Article XXIX, any territory which possesses autonomy in the conduct of its external commercial relations and of the other matters provided for in the Agreement shall be deemed to be government.

Article XXIX

Entry into Force

1. This Agreement, done is a single copy, in English, French and Spanish languages, each text being authentic, shall be deposited with the (...) who shall furnish to each Party a certified copy.
2. This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.
3. This Agreement shall enter into force on the (...) day after (---) Parties have accepted it pursuant to paragraph 1 of Article XXVIII. For each other government it shall enter into force on the thirtieth day following the date of its accession.

Article XXX

Non-Application

1. This Agreement shall not apply as between any two Parties if either of them, at the time either becomes a Party, does not consent to such application. The non-consenting Party shall provide written notification to the PARTIES, including a statement of its reasons for not consenting.

2. At the request of any Party, the PARTIES shall establish a working party to examine the application of paragraph 1 in particular cases regarding, inter alia, appropriateness of the reason for which a Party invokes the provision of paragraph 1. With a view to enabling them to make recommendations to the Parties concerned and/or to the PARTIES.

#### Article XXXI

##### Denial of Benefits

1. A Party may deny the benefits of this Agreement :
  - (a) to the supply of a service, if it establishes that the service originates in the territory of a country that is not a Party to this Agreement, or in the territory of a Party to which the denying Party does not apply this Agreement; and
  - (b) to a service supplier that is a juridical person, if it establishes that ultimate ownership or control of such person is held by persons of a country that is not a Party to this Agreement, or of a Party to which the denying Party does not apply this Agreement.

#### Article XXXII

##### Amendments

1. Amendments to Parts I, II and III of this Agreement and any Annex provisions related thereto shall become effective in respect of those Parties which accept them, upon acceptance by two-thirds of the Parties and thereafter for each other Party upon acceptance by it.
2. Amendments to Parts IV, V and VI of this Agreement and any Annex provisions related thereto shall become effective for all Parties upon acceptance by two-thirds of the Parties.
3. Any Party accepting an amendment to this Agreement shall deposit an instrument of acceptance with the Chief Executive Officer according to such procedures and within such a period as the PARTIES may specify.

### Article XXXIII

#### Withdrawal

Any Party may withdraw from this Agreement at any time after its entry into force. Such withdrawal shall take effect upon the expiration of (...) months from the day on which written notice thereof is received by the Chief Executive Officer who shall promptly inform the PARTIES. Any Party may request an immediate meeting of the Council to examine the matter.

### Article XXXIV

#### Definitions

For the purpose of this Agreement:

- (a) "measure" means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form:
- (b) "supply of a service" includes the production, distribution, marketing, sale and delivery of a services;
- (c) "measures by Parties affecting trade in services" include measure 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.
    - 1. distribution and transportation systems, and
    - 2. public telecommunications transport networks and services, and
  - (iii) the presence, including commercial presence, of persons of a Party supplying a service in the territory of another Party:
- (d) "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.

(e) "service supplier" of another Party means any person of that Party that supplies a services:

(f) "service consumer" of a Party means any person of that Party that receives or uses a services;

(g) "person" of a Party is either a natural or juridical person of that Party

(h) "natural person" of a Party means

(i) a natural person who is a national of the Party under the law of that Party, or

(ii) in the case of a Party which does not have nationals, a natural person who has the right of permanent residence under the law of that Party.

and who resides in the territory of that Party or any other Party.

(i) "juridical person" of another Party means any corporation, partnership, joint venture, sole proprietorship or association, whether constituted for profit or otherwise, and whether privately-owned or governmentally-owned, which its

(i) constituted 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) owned or controlled by

1. natural persons of that Party, or

2. juridical persons of that Party as defined under paragraph (1).

(j) A juridical person is

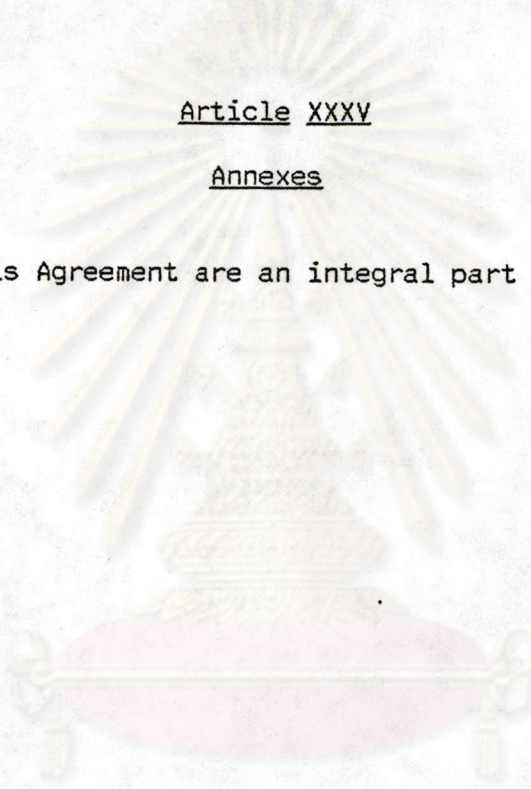
(i) "owned" by persons of a Party if more than 50 per cent of the equity interest in it is beneficially owned by persons of that Party;

- (ii) "controlled" by persons of a Party if such persons have the power to name a majority of its directors or to otherwise 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.

Article XXXV

Annexes

The Annexes to this Agreement are an integral part of this Agreement.



ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย

Attachment to Annex on Article II Exemptions

PROCEDURE

1. This procedure applies prior to the adoption of the text of the GATS for specific exemptions from the obligations of Article II:1.
2. With respect to individual exemptions, a Party shall provide the following information: description of the measure, the treatment inconsistent with Article II:1 of the Agreement, the intended duration of the exemption, and the conditions which create the need for the exemption.
3. Exemptions shall form part of the draft GATS text and shall be listed in the Annex on Article II Exemptions.



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จุฬาลงกรณ์มหาวิทยาลัย

ANNEX ON ARTICLE II EXEMPTIONS

Scope

1. This Annex specifies the conditions under which a Party, at the entry into force of the Agreement, is exempted from its obligations under Article II:1.
2. Any new exemptions applied for after the entry to force of the Agreement shall be dealt with under Article XXV:4.

Review

3. The PARTIES shall review all exemptions granted for a period of more than 5 years. The first such review shall take place no more than 5 years after the entry into force of the Agreement.
4. The PARTIES in a review shall:
  - (a) examine whether the conditions which created the need for the exemption still prevail; and
  - (b) determine the date of any further review.

Termination

5. The exemption of a Party from its obligations under Article II:1 of the Agreement with respect to a particular measure terminates on the date provided for in the exemption.
6. In principle, such exemptions should not exceed the period of 10 years. In any event, they shall be subject to negotiation in subsequent trade liberalizing rounds.
7. A Party shall notify the PARTIES at the termination of the exemption period that the inconsistent measure has been brought into conformity with Article II:1 of the Agreement.

ANNEX ON AIR TRANSPORT SERVICES

1. This Annex applies to measures affecting trade in air transportation services, whether scheduled or unscheduled, and ancillary services.

2. Except as set out in paragraph 3, no provision of the Agreement shall apply to measure affecting:

- (a) traffic rights covered by the Chicago Convention, including the five freedoms of the air, and by bilateral air services agreements;
- (b) directly related activities which would limit or affect the ability of parties to negotiate, to grant or to receive traffic rights, or which would have the effect of limiting their exercise.

3. Notwithstanding the provisions of paragraph 2, the Agreement shall apply to measures affecting;

- aircraft repair and maintenance services;
- the selling or marketing of air transport services;
- computer reservation services.

4. Each Party shall ensure that access to and use of publicly available services offered within or from its territory is accorded to air services providers of other Parties on reasonable and non-discriminatory terms and conditions where commitments for such air services have been made and unless otherwise specified in its schedule.\*

5. Dispute settlement procedures provided for in bilateral air service agreements or under the Chicago Convention shall apply with respect to traffic rights and directly related activities as covered by paragraph 2 above. The dispute settlement facilities of the Agreement may be invoked only where obligations or commitments have been assumed by the concerned Parties and where dispute settlement procedures provided for in bilateral air service agreements or under the Chicago Convention have been exhausted.


6. Air Transport services and the operation of this Annex shall be reviewed periodically or at least every five years.

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\*The content of this paragraph will depend on the outcome of the work relating to legal clarification of the definitions contained in Article XXXIV.

## 7. Definitions:

- (a) aircraft repair and maintenance: activities required at a regular or ad hoc basis in order to guarantee the operational airworthiness of aircraft.
- (b) selling and marketing: 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.
- (c) computerized reservation system: services provided by computerized systems that contain information about air carriers schedules, seat availability, fares and far rules, through which reservations can be made.



ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย

ประวัติผู้เขียน



นางสาวนิรมล สุขวัฒนางกูร เกิดที่กรุงเทพมหานคร เมื่อวันที่ 29 พฤศจิกายน พ.ศ. 2507 จบการศึกษานิติศาสตรบัณฑิต จากจุฬาลงกรณ์มหาวิทยาลัย ในปีการศึกษา 2528 เริ่มทำงานครั้งแรกในตำแหน่ง เจ้าหน้าที่ประจำหน่วยติดตามหนี้ ฝ่ายสินเชื่อผลประโยชน์ ธนาคารกรุงศรีอยุธยา จำกัด เมื่อ พ.ศ. 2529 ปัจจุบันทำงานในตำแหน่งนิติกร ประจำแผนกสัญญาต่างประเทศ กองการตลาด ฝ่ายช่าง บริษัท การบินไทย จำกัด

ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย