suppliers, subject to its non-conforming measures as provided in Article 8.8 (Schedules of Non-Conforming Measures).[6]

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

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

Article 8.5: Market Access

1. With respect to market access through the modes of supply identified in subparagraph (r) of Article 8.1 (Definitions), a Party making commitments in accordance with Article 8.7 (Schedules of Specific Commitments) shall accord services and service suppliers of any other Party treatment no less favourable than that provided for under the terms, limitations, and conditions agreed and specified in its Schedule in Annex II (Schedules of Specific Commitments for Services).[7]

2. The measures which a Party shall not adopt or maintain either on the basis of a regional subdivision or on the basis of its entire territory, either in sectors where market access commitments are undertaken and in accordance with its specific commitments, as provided in Article 8.7 (Schedules of Specific Commitments), or subject to its non-conforming measures, as provided in the Article 8.8 (Schedules of Non-Confirming Measures), are defined as:

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

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

   (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;[8]

   (d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;

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

   (f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

Article 8.6: Most-Favoured-Nation Treatment

1. A Party making commitments in accordance with Article 8.7 (Schedules of Specific Commitments) that opts under paragraph 2 of Article 8.3 (Scheduling of Commitments) to make commitments on Most-Favoured-Nation Treatment shall:

   (a) in respect of the sectors and subsectors inscribed in its Schedule in Annex II (Schedules of Specific Commitments for Services) that are identified with an “MFN”;

   (b) in respect of the sectors and subsectors set out in its Most-Favoured-Nation Treatment Sectoral Coverage Appendix to its Schedule in Annex II (Schedules of Specific Commitments for Services); or

[6] Nothing in this Article shall 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.

[7] If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (r)(i) of Article 8.1 (Definitions) and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (r)(iii) of Article 8.1 (Definitions), it is thereby committed to allow related transfers of capital into its territory.

[8] This subparagraph does not cover measures of a Party which limit inputs for the supply of services.