

## CHAPTER NINE CROSS-BORDER TRADE IN SERVICES

### ARTICLE 9.1: SCOPE

1. This Chapter shall apply to measures adopted or maintained by a Party affecting cross-border trade in services by service suppliers of the other Party. Such measures include measures affecting:

- (a) the production, distribution, marketing, sale, and delivery of a service;
- (b) the purchase or use of, or payment for, a service;
- (c) the access to and use of distribution, transport, or telecommunications networks and services in connection with the supply of a service;
- (d) the presence in its territory of a service supplier of the other Party; and
- (e) the provision of a bond or other form of financial security as a condition for the supply of a service.

2. For purposes of this Chapter, **measures adopted or maintained by a Party** means measures adopted or maintained by:

- (a) central or local governments and authorities; and
- (b) non-governmental bodies in the exercise of powers delegated by central or local governments or authorities.

3. Notwithstanding paragraph 1, Articles 9.4, 9.7, and 9.8 shall also apply to measures adopted or maintained by a Party affecting the supply of a service in its territory by a covered investment<sup>1</sup>.

4. Notwithstanding paragraph 1, this Chapter shall not apply to:

- (a) financial services as defined in Article 9.13, except that paragraph 3 shall apply where the financial service is supplied by a covered investment that is not a covered investment in a financial institution as defined in Article 1.3 (Definitions) in the Party's territory;
- (b) government procurement;

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<sup>1</sup> For greater certainty, the scope of application of Articles 9.4, 9.7, and 9.8 to measures adopted or maintained by a Party affecting the supply of a service in its territory by a covered investment is limited to the scope specified in Article 9.1, subject to any applicable non-conforming measures and exceptions. Nothing in this Chapter, including paragraph 3, is subject to investor-state dispute settlement under Section B of Chapter 8 (Investment).

- (c) air services, including domestic and international air transportation services, whether scheduled or non-scheduled, and related services in support of air services, other than:
  - (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;
  - (ii) the selling and marketing of air transport services; and
  - (iii) computer reservation system (CRS) services; or
- (d) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance.

5. This Chapter shall not impose any obligation on a Party with respect to a national of the other Party seeking access to its employment market, or employed on a permanent basis in its territory, and shall not confer any right on that national with respect to that access or employment.

6. This Chapter shall not apply to services supplied in the exercise of governmental authority in a Party's territory. A **service supplied in the exercise of governmental authority** means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.

#### ARTICLE 9.2: NATIONAL TREATMENT

Each Party shall accord to service suppliers of the other Party treatment no less favorable than that it accords, in like circumstances, to its own service suppliers.

#### ARTICLE 9.3: MOST-FAVORED-NATION TREATMENT<sup>2</sup>

Each Party shall accord to service suppliers of the other Party treatment no less favorable than that it accords, in like circumstances, to service suppliers of a non-Party.

#### ARTICLE 9.4: MARKET ACCESS

Neither Party may adopt or maintain, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

- (a) impose limitations on:

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<sup>2</sup> For greater certainty, nothing in Article 9.3 shall be interpreted as extending the scope of this Chapter.

- (i) the number of service suppliers, whether in the form of numerical quotas, monopolies, exclusive service suppliers, or the requirement of an economic needs test;
  - (ii) the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
  - (iii) the total number of service operations or the total quantity of services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test<sup>3</sup>; or
  - (iv) the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test; or
- (b) restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

#### ARTICLE 9.5: LOCAL PRESENCE

Neither Party may require a service supplier of the other Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border supply of a service.

#### ARTICLE 9.6: NON-CONFORMING MEASURES

1. Articles 9.2 through 9.5 shall not apply to:
  - (a) any existing non-conforming measure that is maintained by a Party at:
    - (i) the central level of government, as set out by that Party in its Schedule to Annex I; or
    - (ii) a local level of government<sup>4 5</sup>;
  - (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
  - (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 9.2, 9.3, 9.4, or 9.5.

<sup>3</sup> Sub-subparagraph (iii) does not cover measures of a Party which limit inputs for the supply of services.

<sup>4</sup> For Korea, **local level of government** means a local government as defined in the *Local Autonomy Act*.

<sup>5</sup> For greater certainty, for Colombia the *Departamentos* are part of the local level of government.

2. Articles 9.2 through 9.5 shall not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities as set out in its Schedule to Annex II.

#### ARTICLE 9.7: DOMESTIC REGULATION

1. Where a Party requires authorization for the supply of a service, the Party's competent authorities shall, within a reasonable time after the submission of an application considered complete under its laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the Party's competent authorities shall provide, without undue delay, information concerning the status of the application. This obligation shall not apply to authorization requirements that a Party adopts or maintains with respect to sectors, sub-sectors, or activities as set out in its Schedule to Annex II.

2. With a view to ensuring that measures related to qualification requirements and procedures, technical standards, and licensing requirements do not constitute unnecessary barriers to trade in services, while recognizing the right to regulate and to introduce new regulations on the supply of services in order to meet national policy objectives, each Party shall endeavor to ensure, as appropriate for individual sectors, that such measures are:

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

3. If the results of the negotiations related to Article VI:4 of the GATS (or the results of any similar negotiations undertaken in other multilateral fora in which both Parties participate) enter into effect, this Article shall be amended, as appropriate, after consultations between the Parties, to bring those results into effect under this Agreement. The Parties shall coordinate on such negotiations, as appropriate.

#### ARTICLE 9.8: TRANSPARENCY IN DEVELOPING AND APPLYING REGULATIONS<sup>6</sup>

Further to Chapter 18 (Transparency):

- (a) Each Party shall establish or maintain appropriate mechanisms for responding to inquiries from interested persons regarding its regulations related to the subject matter of this Chapter.

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<sup>6</sup> For greater certainty, "regulations" includes regulations establishing or applying to licensing authorization or criteria at the central and local levels of government.

- (b) If, consistent with Article 18.1 (Publication), a Party does not provide advance notice of and opportunity for comment on regulations it proposes to adopt related to the subject matter of this Chapter, it shall, to the extent possible, address in writing the reasons for not doing so.
- (c) To the extent possible, each Party shall allow reasonable time between publication of final regulations related to the subject matter of this Chapter and their effective date.

#### ARTICLE 9.9: RECOGNITION

1. For purposes of the fulfillment, in whole or in part, of its standards or criteria for the authorization, licensing, or certification of services suppliers, and subject to the requirements of paragraph 5, 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. Where a Party recognizes, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licenses or certifications granted in the territory of a non-Party, nothing in Article 9.3 shall be construed to require the Party to accord such recognition to the education or experience obtained, requirements met, or licenses or certifications granted in the territory of the other Party.
3. On request of the other Party, a Party shall promptly provide information, including appropriate descriptions, concerning any recognition agreement or arrangement that the Party or relevant bodies in its territory have concluded.
4. 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 the other Party, if the other Party is interested, to negotiate its accession to such an agreement or arrangement or to negotiate a comparable one with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that education, experience, licenses, or certifications obtained or requirements met in the other Party's territory should be recognized.
5. Neither Party may accord recognition in a manner that would constitute a means of discrimination between countries in the application of its standards or criteria for the authorization, licensing, or certification of services suppliers, or a disguised restriction on trade in services.
6. Annex 9-A shall apply to measures adopted or maintained by a Party related to the licensing or certification of professional service suppliers as set out in that Annex.

#### ARTICLE 9.10: PAYMENTS AND TRANSFERS<sup>7</sup>

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<sup>7</sup> For greater certainty, Annex 8-C (Transfers) shall apply to Article 9.10.

1. Each Party shall permit all transfers and payments related to the cross-border supply of services to be made freely and without delay into and out of its territory.
2. Each Party shall permit such transfers and payments related to the cross-border supply of services to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.
3. Notwithstanding paragraphs 1 and 2, a Party may prevent or delay a transfer or payment through the equitable, non-discriminatory, and good faith application of its laws related to:
  - (a) bankruptcy, insolvency, or the protection of the rights of creditors;
  - (b) issuing, trading, or dealing in securities, futures, options, or derivatives;
  - (c) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;
  - (d) criminal or penal offences; or
  - (e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

#### ARTICLE 9.11: DENIAL OF BENEFITS

1. A Party may deny the benefits of this Chapter to a service supplier of the other Party if the service supplier is an enterprise owned or controlled by persons of a non-Party, and the denying Party adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise.
2. A Party may deny the benefits of this Chapter to a service supplier of the other Party if the service supplier is an enterprise owned or controlled by persons of a non-Party or of the denying Party that has no substantial business activities in the territory of the other Party. If, before denying the benefits of this Chapter, the denying Party knows that the enterprise has no substantial business activities in the territory of the other Party and that persons of a non-Party, or of the denying Party, own or control the enterprise, the denying Party shall, to the extent practicable, notify the other Party before denying the benefits. If the denying Party provides such notice, it shall consult with the other Party at the other Party's request.

#### ARTICLE 9.12: WORK PROGRAM ON FINANCIAL SERVICES

Unless otherwise agreed by the Parties, the authorities responsible for financial services will meet four years after the date of entry into force of this Agreement to discuss the viability and convenience of incorporating financial services into this Agreement.

#### ARTICLE 9.13: DEFINITIONS

For purposes of this Chapter:

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

**computer reservation system services** means services provided by computerized systems that contain information about air carriers' schedules, availability, fares, and fare rules, through which reservations can be made or tickets may be issued;

**cross-border trade in services** or **cross-border supply of services** means the supply of a service:

- (a) from the territory of one Party into the territory of the other Party;
- (b) in the territory of one Party by a person of that Party to a person of the other Party; or
- (c) by a national of a Party in the territory of the other Party;

but does not include the supply of a service in the territory of a Party by a covered investment;

**enterprise** means an "enterprise" as defined in Article 1.3 (Definitions), and a branch of an enterprise;

**enterprise of a Party** means an enterprise organized or constituted under the laws of a Party, and a branch located in the territory of a Party and carrying out business activities there;

**financial service** means any service of a financial nature including those defined in paragraph 5(a) of the Annex on Financial Services of GATS;

**professional services** means services, the supply of which requires specialized post-secondary education, or equivalent training or experience, or examination and for which the right to practice is granted or restricted by a Party, but does not include services supplied by trades-persons or vessel and aircraft crew members;

**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; and

**service supplier of a Party** means a person of that Party that seeks to supply or supplies a service<sup>8</sup>.

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<sup>8</sup> For purposes of Articles 9.2 and 9.3, "service suppliers" has the same meaning as "services and service suppliers" as used in Articles II and XVII of GATS.

## **ANNEX 9-A PROFESSIONAL SERVICES**

### *Development of Professional Services Standards*

1. Where the Parties agree, each Party shall encourage the relevant bodies in its territory to develop mutually acceptable standards and criteria for licensing and certification of professional services suppliers of the other Party and to provide recommendations on mutual recognition to the Joint Commission.

2. The standards and criteria referred to in paragraph 1 may be developed with regard to the following matters:

- (a) education – accreditation of schools or academic programs;
- (b) examinations – qualifying examinations for licensing, including alternative methods of assessment such as oral examinations and interviews;
- (c) experience – length and nature of experience required for licensing;
- (d) conduct and ethics – standards of professional conduct and the nature of disciplinary action for non-conformity with those standards;
- (e) professional development and re-certification – continuing education and ongoing requirements to maintain professional certification;
- (f) scope of practice – extent of, or limitations on, permissible activities;
- (g) local knowledge – requirements for knowledge of such matters as local laws, regulations, language, geography, or climate; or
- (h) consumer protection – including alternatives to residency requirements, such as bonding, professional liability insurance, and client restitution funds, to provide protection of consumers.

3. On receipt of a recommendation referred to in paragraph 1, the Joint Commission shall review the recommendation within a reasonable time to determine whether it is consistent with this Agreement. Based on the result of the Joint Commission's review, each Party shall encourage its respective competent authorities, where appropriate, to implement the recommendation within a mutually agreed time.

### *Temporary Licensing*

4. For mutually agreed individual professional services, each Party shall encourage the relevant bodies in its territory to develop procedures for the temporary licensing of professional service suppliers of the other Party.

### *Recognition*

5. For professional services generally and when the Parties so agree, each Party shall consider, as appropriate, the following matters:

- (a) procedures for fostering the development of mutual recognition agreements or arrangements among relevant professional bodies;
- (b) the feasibility of developing model procedures for the licensing and certification of professional services suppliers; and
- (c) other issues of mutual interest related to the supply of professional services.

### *Review*

6. The Joint Commission shall review the implementation of this Annex at least once every three years.