

## CHAPTER EIGHT CROSS-BORDER TRADE IN SERVICES

### Article 8.1: 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, this Chapter does not apply to:

- (a) financial services as defined in Article 10.19 (Definitions);
- (b) government procurement;
- (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  - (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service, excluding so-called line maintenance;

- (ii) 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; or
- (d) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance.

4. This Chapter does 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 does not confer any right on that national with respect to that access or employment.

5. 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 8.2: National Treatment**

Each Party shall accord to service suppliers of the other Party treatment no less favorable than that it accords, in like circumstances<sup>1</sup>, to its own service suppliers.

#### **Article 8.3: Most-Favored-Nation Treatment**

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.

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<sup>1</sup> For greater certainty, whether treatment is accorded in "like circumstances" under Articles 8.2 or 8.3 depends on the totality of the circumstances, including whether the relevant treatment distinguishes between services or service suppliers on the basis of legitimate public welfare objectives.

#### **Article 8.4: 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:
  - (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>2</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 8.5: 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 8.6: Non-Conforming Measures**

1. Articles 8.2 through 8.5 shall not apply to:

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<sup>2</sup> Subparagraph (a)(iii) does not cover measures of a Party that limit inputs for the supply of services.

- (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>3</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 Articles 8.2, 8.3, 8.4, or 8.5.

2. Articles 8.2 through 8.5 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 8.7: Domestic Regulation**

1. Each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective, and impartial manner.

2. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards, and licensing requirements 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

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<sup>3</sup> For Korea, local level of government means a local government as defined in the *Local Autonomy Act*.

- (c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

3. In determining whether a Party is in conformity with its obligations under subparagraph 2(a), international standards of relevant international organizations<sup>4</sup> applied by that Party shall be taken into account.

4. If a Party requires authorization for the supply of a service, it shall ensure that its competent authorities:

- (a) within a reasonable period of time after the submission of an application considered complete under its laws and regulations, inform the applicant of the decision concerning the application;
- (b) to the extent practicable, establish an indicative timeframe for the processing of an application;
- (c) on request of the applicant, provide, without undue delay, information concerning the status of the application;
- (d) in the case of an incomplete application and on request of the applicant, identify, where practicable, all the additional information that is required to complete the application, and provide the opportunity to remedy deficiencies within a reasonable time frame;
- (e) if an application is terminated or denied, to the maximum extent possible, inform the applicant in writing, and upon request and without undue delay, provide the reasons for such action. Consistent with the denying Party's domestic laws and regulations, the applicant will have the possibility of resubmitting, at its discretion, a new application;
- (f) to the extent permissible under its laws and regulations, do not require physical presence in the territory of a Party for the submission of an application for a license or qualification;
- (g) endeavor to accept applications in electronic format under the equivalent conditions of authenticity as paper submissions, in accordance with its laws and regulations; and

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<sup>4</sup> "Relevant international organizations" refers to international bodies whose membership is open to the relevant bodies of the Parties.

- (h) if they deem appropriate, accept copies of documents that are authenticated in accordance with the Party's laws in place of original documents.

5. Each Party shall ensure that any authorization fee<sup>5</sup> charged by any of its competent authorities is reasonable, transparent and does not, in itself, restrict the supply of the relevant service.

6. If licensing or qualification requirements include the completion of an examination, each Party shall, to the extent practicable, ensure that:

- (a) the examination is scheduled at reasonable intervals; and
- (b) a reasonable period of time is provided to enable interested persons to submit an application.

7. Paragraphs 1 through 6 shall not apply to a sector or measure to the extent that such sector or measure is not subject to Article 8.2 or Article 8.4 by reason of a Party's commitments made in accordance with Article 8.6.

8. 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.<sup>6</sup>

### **Article 8.8: Transparency in Developing and Applying Regulations<sup>7</sup>**

Further to Chapter Nineteen (Transparency):

- (a) each Party shall establish or maintain appropriate mechanisms for responding to inquiries from interested persons regarding its regulations relating to the subject matter of this Chapter<sup>8</sup>;

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<sup>5</sup> For the purposes of this paragraph, authorization fees do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

<sup>6</sup> For greater certainty, nothing in Article 8.7 prejudices either Party's position in any other forum with regard to matters covered by Article 8.7.

<sup>7</sup> For greater certainty, "regulations" includes regulations establishing or applying to licensing authorization or criteria at the central and local levels of government.

<sup>8</sup> The implementation of the obligation to maintain or establish appropriate mechanisms may need to take into account the resource and budget constraints of small administrative agencies.

- (b) if, consistent with Article 19.1.2, a Party does not provide advance notice of and opportunity for comment on regulations it proposes to adopt relating to the subject matter of this Chapter, it shall, to the extent possible, address in writing the reasons for not doing so; and
- (c) to the extent possible, each Party shall allow reasonable time between publication of final regulations relating to the subject matter of this Chapter and their effective date.

### **Article 8.9: 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 8.3 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 has 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.

### **Article 8.10: Payments and Transfers<sup>9</sup>**

1. Each Party shall permit all transfers and payments relating 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 relating 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 relating 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 8.11: Denial of Benefits**

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

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<sup>9</sup> For greater certainty, Annex 8-A shall apply to Article 8.10.



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 8.12: Definitions**

For purposes of this Chapter:

**airport operation services** means 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;

**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 1.4 (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;

**ground handling services** means the supply at an airport, on a fee or contract basis, of the following services: airline representation, administration and supervision; passenger handling; baggage handling; ramp services; catering, except the preparation of the food; air cargo and mail handling; fueling 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 centralized airport

infrastructure, such as de-icing facilities, fuel distribution systems, baggage handling systems and fixed intra-airport transport systems;

**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 or the applicable conditions;

**service supplier of a Party** means a person of that Party that seeks to supply or supplies a service;<sup>10</sup> and

**specialty air services** means any non-transportation air services, such as aerial fire-fighting, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, and helicopter-lift for logging and construction, and other airborne agricultural, industrial, and inspection services.

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<sup>10</sup> For purposes of Articles 8.2 and 8.3, “service suppliers” has the same meaning as “services and service suppliers” as used in Articles II and XVII of GATS.

## **Annex 8-A Transfers**

1. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining temporary safeguard measures pursuant to the Party's domestic law and regulations with regard to payments and capital movements:

- (a) in the event of serious balance of payments or external financial difficulties or threat thereof; or
- (b) where, in exceptional circumstances, payments and capital movements cause or threaten to cause serious difficulties for the operation of monetary policy or exchange rate policy in either Party.

2. The measures referred to in paragraph 1 shall:

- (a) not exceed a period of one year; however, under exceptional circumstances and for justified reasons a Party may extend the period for application of such measures for an additional year. The Party seeking an extension shall notify in advance to the other Party of such extension;
- (b) be consistent with the *Articles of Agreement of the International Monetary Fund* (hereinafter referred to as the "IMF");
- (c) not exceed those necessary to deal with the circumstances described in paragraph 1;
- (d) be temporary and phased out progressively as the situation described in paragraph 1 improves;
- (e) not be confiscatory;
- (f) promptly be notified to the other Party;
- (g) be applied on a national treatment basis;
- (h) ensure that the other Party is treated as favorably as any non-Party;
- (i) not constitute a dual or multiple exchange rate practice;

- (j) not restrict payments or transfers for current transactions, unless the imposition of such measures complies with the procedures stipulated in the IMF; and
- (k) not restrict outward payments or transfers associated with foreign direct investment<sup>11</sup>.

3. For the purpose of this Annex, **foreign direct investment** means an investment of an investor of a Party other than a foreign credit, made in order to:

- (a) establish an enterprise in or increase the capital of an existing enterprise of the other Party; or
- (b) acquire equity of an existing enterprise of the other Party, but excludes such an investment that is of a purely financial character and is designed only to gain indirect access to the financial market of the other Party.

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<sup>11</sup> For greater certainty, the Parties may exercise any controls on inward capital transfers as are necessary to regulate international capital movements in accordance with the IMF. Such measures may include controls, such as an obligation to deposit part of the amount of such transactions.