

## CHAPTER 10

### CROSS-BORDER TRADE IN SERVICES

#### ARTICLE 10.1: 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; and
- (d) the presence in its territory of a service supplier of the other Party.

2. For the 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, regional or local governments or authorities.

3. Notwithstanding paragraph 1, Articles 10.4, 10.7, and 10.8 shall also apply to measures adopted or maintained by a Party affecting the supply of a service in its territory through commercial presence.

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

- (a) government procurement;
- (b) 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  - (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;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

- (c) 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 10.2: 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 10.3: MOST-FAVoured-NATION TREATMENT<sup>1</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 10.4: MARKET ACCESS

No 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

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<sup>1</sup> For greater certainty, nothing in this Article shall be interpreted as extending the scope of this Chapter.

<sup>2</sup> Sub-subparagraph (iii) does not cover measures of a Party which limit inputs for the supply of services.

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 10.5: LOCAL PRESENCE

No 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 10.6: NON-CONFORMING MEASURES

1. Articles 10.2 through 10.5 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>3</sup>
- (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a);
- (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 10.2; or
- (d) an amendment to any non-conforming measure referred to in subparagraphs (a), to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 10.3, 10.4, or 10.5.

2. Subparagraph 1(d) shall not apply until both Parties, individually, have undertaken the obligation specified in subparagraph 1(d) in any existing or future free trade area agreement or similar arrangements covering services liberalization provisions with any non-Party. Until such time, Articles 10.3, 10.4 and 10.5 shall not apply to an amendment to any non-conforming measure referred to in subparagraph 1(a), to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the entry into force of the Agreement, with Article 10.3, 10.4, or 10.5.

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

3. Articles 10.2 through 10.5 shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities as set out in its Schedule to Annex II.

#### ARTICLE 10.7: 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, subsectors, 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 the Parties participate) enter into effect, this Article shall be amended, as appropriate, after consultations among the Parties, to bring those results into effect under this Agreement. The Parties shall coordinate on such negotiations, as appropriate.

#### ARTICLE 10.8: TRANSPARENCY IN DEVELOPING AND APPLYING REGULATIONS<sup>4</sup>

Further to Chapter 16 (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; and

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<sup>4</sup> For greater certainty, "regulations" includes regulations establishing or applying to licensing authorization or criteria at the central, regional, and local levels of government.

- (b) 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 10.9: RECOGNITION

1. For the 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 10.3 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 where appropriate 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. No Party may accord recognition in a manner that would constitute a means of discrimination among 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 10.10: PAYMENTS AND TRANSFERS<sup>5</sup>

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.

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<sup>5</sup> For greater certainty, Annex 9-E(Transfers) shall apply to this Article.

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 10.11: 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:

- (a) does not maintain normal economic relations with the non-Party; or
- (b) 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. For the purpose of this Article, an enterprise is:

- (a) "owned" by a person if more than 50 percent of the equity interest in it is beneficially owned by the person; and
- (b) "controlled" by a person if the person has the power to name a majority of its directors or otherwise to legally direct its actions.

#### ARTICLE 10.12: EXCEPTIONS

1. Article 10.3 shall not be construed so as to oblige one Party to extend to the service suppliers of the other Party the benefit of any treatment, preference or privilege resulting from:

- (a) any existing customs union, common market, economic or monetary union, free trade area or similar international agreement, to which either Party is a party; or

- (b) any future customs union, common market, economic or monetary union, free trade area or similar international agreement, to which either Party will be a party.

2. Subparagraph 1(b) shall cease to apply when both Parties, individually, are party to a customs union, common market, economic or monetary union, free trade area or similar international agreement, which does not include the exception in subparagraph 1(b).

#### ARTICLE 10.13: DEFINITIONS

For the 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;

**commercial presence** means any type of business or professional establishment, including through

- (a) the constitution, acquisition or maintenance of an enterprise, or
- (b) the creation or maintenance of a branch or a representative office,

within the territory of a Party for the purpose of supplying a service;

**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 1.7 (Definitions), and a branch of an enterprise;

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

**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>6</sup>

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<sup>6</sup> For the purposes of Articles 10.2 and 10.3, “service suppliers” has the same meaning as “services and service suppliers” as used in Articles II and XVII of GATS.