

## CHAPTER TEN

### CROSS-BORDER TRADE IN SERVICES

#### ARTICLE 10.1: SCOPE OF APPLICATION

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

3. This Chapter shall not apply to:

- (a) financial services as defined in Article 12.20 (Definitions), except that paragraph 4 shall apply where the financial services are supplied by a covered investment that is not a covered investment in a financial institution as defined in Article 12.20 (Definitions) in the Party's territory;
- (b) air services<sup>1</sup>, 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  - (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;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

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<sup>1</sup> For greater certainty, the term "air services" includes but is not limited to traffic rights.

- (iii) computer reservation system (CRS) services;
- (c) procurement as defined in Article 16.20 (Definitions); or
- (d) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance.<sup>2</sup>

4. Articles 10.4, 10.7, 10.8, and footnote 2 shall apply to measures adopted or maintained by a Party affecting the supply of a service in its territory by a covered investment<sup>3</sup>.

5. 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.

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-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.

#### ARTICLE 10.4: MARKET ACCESS

Neither Party shall 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> Notwithstanding paragraph 3(d) of Article 10.1, the Party which considers that it is adversely affected by a subsidy or grant of the other Party may request consultations with the other Party on such matters. Such requests shall be accorded sympathetic consideration. The term "consultations" referred to in this footnote does not mean "consultations" in accordance with Article 23.4 (Consultations).

<sup>3</sup> For greater certainty, the scope of application of Articles 10.4, 10.7, 10.8, and footnote 2 on 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 of application specified in Article 10.1, subject to any applicable non-conforming measures and exceptions. The Parties understand that nothing in this Chapter, including paragraph 4 of Article 10.1, is subject to Section B (Settlement of Disputes between an Investor and the Host Party) of Chapter Nine (Investment).

- (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>4</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 10.5: LOCAL PRESENCE

Neither Party shall 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 set out in Annex I; or
  - (ii) a local level of government;
- (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 10.2,

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<sup>4</sup> Subparagraph (a)(iii) of this Article shall not cover measures of a Party that limit inputs for the supply of services.

10.3, 10.4, or 10.5.

2. Articles 10.2 through 10.5 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 set out in Annex II.

#### ARTICLE 10.7: TRANSPARENCY IN DEVELOPING AND APPLYING REGULATIONS<sup>5</sup>

Further to Chapter Twenty-One (Transparency):

- (a) each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding its regulations related to the subject matter of this Chapter;<sup>6</sup>
- (b) to the extent possible, each Party shall:
  - (i) publish in advance any measure that it proposes to adopt related to the subject matter of this Chapter; and
  - (ii) provide interested persons and the other Party with a reasonable opportunity to comment on such proposed measures.

If 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; and

- (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 10.8: 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. Upon request of the applicant, the Party's competent authorities shall provide, without undue delay, information on 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 set out in Annex II.

2. With a view to ensuring that measures related to qualification requirements and

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<sup>5</sup> For greater certainty, "regulations" includes regulations establishing or applying to licensing authorization or criteria at the central, regional and local levels of government.

<sup>6</sup> The implementation of the obligation to establish appropriate mechanisms for small administrative agencies may need to take into account resources and budget constraints.

procedures, technical standards, and licensing requirements do not constitute unnecessary barriers to trade in services, 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 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>7</sup>

#### ARTICLE 10.9: 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 4, 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 on 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. 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 that other Party is interested, to negotiate 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 that other Party's territory should be recognized.

4. Neither Party shall 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.

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<sup>7</sup> For greater certainty, nothing in this Article prejudices either Party's position in any other forum regarding matters covered by this Article.

5. Annex 10A 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 10.10: IMPLEMENTATION

The Parties shall consult annually, or as otherwise agreed, through various means including any technological means available to the Parties to review the implementation of this Chapter and consider other matters of mutual interest affecting trade in services.

#### ARTICLE 10.11: DENIAL OF BENEFITS

Subject to prior notification and consultations<sup>8</sup>, 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 and the enterprise has no substantial business activities in the territory of the other Party.

#### ARTICLE 10.12: PAYMENTS AND TRANSFERS<sup>9</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.

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.

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<sup>8</sup> The term “consultations” referred to in this Article does not mean “consultations” in accordance with Article 23.4 (Consultations).

<sup>9</sup> For greater certainty, Annex 9C (Temporary Safeguard Measures) applies to this Article.

#### ARTICLE 10.13: DEFINITIONS

For purposes of this Chapter:

**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 its branch;

**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; and

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

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<sup>10</sup> For purposes of Articles 10.2, 10.3, and 10.4, “services suppliers” has the same meaning as “services and service suppliers” as used in Articles XVII, II, and XVI of GATS, respectively.

## **ANNEX 10A**

### **PROFESSIONAL SERVICES**

#### *Development of Professional Services*

1. 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 its mutual recognition to the Joint Commission.
2. The standards and criteria referred to in paragraph 1 may be developed regarding 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; or
  - (g) local knowledge: requirements for knowledge of such matters as local laws, regulations, language, geography, or climate.

3. Upon 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 relevant bodies, 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.

#### *Review*

5. The Joint Commission shall review the implementation of this Annex at least once every three years. The Joint Commission will take into account in its review the different views of the Parties on their regulations.