

## Chapter 9

### Trade in Services

#### Article 9.1: Definitions

For the purpose of this Chapter:

**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;

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repair and maintenance services** means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance;

**airport operation services** means passenger air terminal services and ground services on air fields, including runway operating services, on a fee or contract basis covered under CPC 7461, excluding airport security services and services covered in ground-handling services;

**commercial presence** means any type of business or professional establishment, including, *inter alia*, through the constitution, acquisition or maintenance of a juridical person, as well as branches or representative offices within the territory of a Party for the purpose of supplying a service;

**computer reservation system services** means services provided by computerised systems that contain information about air carrier's schedules, availability, fares, and fare rules, through which reservations can be made or tickets may be issued (part of CPC 7523);

**juridical person** means any legal entity duly constituted or otherwise organised under applicable law, whether for profit, including governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;

**measure** means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;

**measures adopted or maintained by a Party** means measures adopted or maintained by:

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

**natural person of a Party** means a natural person who resides in the territory of a Party and who under the law of that Party is a national of that Party;

**selling and marketing of air transport services** has the same meaning as such term is defined in paragraph 6 (b) of GATS Annex on Air Transport Services, except that the term marketing shall be limited to market research, advertising and distribution;

**service supplier** means any juridical or natural person that seeks to supply or supplies a service;

**services** means any service in any sector except services supplied in the exercise of governmental authority;

**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;

**state enterprise** means a juridical person that is owned, or controlled through ownership interests by a Party; and

**trade in services** means the supply of a service:

- (a) from the territory of a Party into the territory of the other Party (mode 1);
- (b) in the territory of a Party by a person of that Party to a person of the other Party (mode 2);
- (c) by a service supplier of a Party, through commercial presence in the territory of the other Party (mode 3); and
- (d) by a service supplier of a Party through presence of natural persons in the territory of the other Party (mode 4).

## **Article 9.2: Scope and Coverage**

1. This Chapter shall apply to measures adopted or maintained by a Party affecting trade in services by a service supplier of the other Party, including those related to:

- (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, in connection with the supply of a service, services which are required by the Parties to be offered to the public generally; and
- (d) the presence in its territory of a service supplier of the other Party.

2. This Chapter shall not apply to:
- (a) financial services as defined in Article 10.1 (Definitions);
  - (b) government procurement;
  - (c) subsidies or grants provided by a Party or a state enterprise, including government-supported loans, guarantees, and insurance;
  - (d) air services, including domestic and international air transportation services, whether scheduled or non-scheduled, and related services, other than:
    - (i) aircraft repair and maintenance services;
    - (ii) the selling and marketing of air transport services;
    - (iii) computer reservation system (CRS) services;
    - (iv) specialty air services;
    - (v) airport operation services; and
    - (vi) ground handling services; and
  - (e) measures affecting natural persons seeking access to the employment market of a Party, or measures regarding citizenship, residence or employment on a permanent basis.
3. This Chapter shall not prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to a Party under the terms of a specific commitment<sup>5</sup>.

### **Article 9.3: Market Access<sup>6</sup>**

1. With respect to market access through the modes of supply identified in Article 9.1, each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule referred to in Article 9.6.

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<sup>5</sup> The sole fact of requiring a visa shall not be regarded as nullifying or impairing benefits under a specific commitment.

<sup>6</sup> Nothing in this Article should be interpreted to impede a Party to adopt or maintain non-discriminatory quantitative restrictions related to paragraphs 2 (a) and 2 (e).

2. In sectors where market access commitments are undertaken, the measures which a Party shall not maintain or adopt, unless otherwise specified in its Schedule referred to in Article 9.6, are defined as:

- (a) limitations on the number of services 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;<sup>7</sup>
- (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 a requirement of an economic needs test;
- (e) measures which restrict or require specific types of legal entities or joint ventures through which a service supplier of the other Party 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 9.4: National Treatment**

1. In the sectors inscribed in its Schedule referred to in Article 9.6, and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of the other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.<sup>8</sup>

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

3. 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 the other Party.

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<sup>7</sup> Paragraph 2(c) does not cover measures of a Party which limit inputs for the supply of services.

<sup>8</sup> Specific commitments assumed under this Article shall not 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.

## **Article 9.5: Additional Commitment**

Where a Party undertakes specific commitments on measures affecting trade in services not subject to scheduling under Articles 9.3 and 9.4, such commitments are inscribed in its Schedule as additional commitments.

## **Article 9.6: Schedule of Specific Commitments**

1. The specific commitments undertaken by each Party under Articles 9.3 and 9.4 are set out in the Schedule included in Annex 9.6. With respect to sectors where such commitments are undertaken, each Schedule shall specify:

- (a) terms, limitations and conditions on market access;
- (b) conditions and qualifications on national treatment;
- (c) undertakings relating to additional commitments; and
- (d) where appropriate, the time-frame for implementation of such commitments and the date of entry into force of such commitments.

2. Measures inconsistent with both Articles 9.3 and 9.4 are inscribed in the column relating to Article 9.3. In this case, the inscription will be considered to provide a condition or qualification to Article 9.4 as well.

## **Article 9.7: Modification of Schedules**

Any modification or withdrawal of specific commitments on trade in services shall be made in accordance with of Article 16.2 (Amendments). In the negotiations for such modification or withdrawal, the Parties shall enter into negotiations with a view to reaching an agreement on any necessary compensatory adjustment. In such negotiations and agreements, the Parties shall maintain a general level of mutually advantageous commitments not less favourable to trade than that provided for in their Schedules in Annex 9.6 prior to such negotiations.

## **Article 9.8: Domestic Regulation**

1. In sectors where specific commitments are undertaken, each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

2. Each Party shall maintain or institute, as soon as practicable, judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier, for the prompt review of and, where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.

3. 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, including that such measures are, *inter alia*:

- (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.

4. Where a Party maintains measures relating to qualification requirements and procedures, technical standards and licensing requirements, the Party shall:

- (a) make publicly available:
  - (i) information on requirements and procedures to obtain, renew or retain any licences or professional qualifications; and
  - (ii) information on technical standards;
- (b) where any form of authorisation is required for the supply of a service, ensure that it will:
  - (i) within a reasonable period of time after the submission of an application deemed complete under its domestic laws and regulations, consider the application and make a decision as to whether or not to grant the relevant authorisation;
  - (ii) promptly inform the applicant of the decision whether or not to grant the relevant authorisation;
  - (iii) upon the request of the applicant, provide without undue delay, information concerning the status of the application; and
  - (iv) where practicable, upon the written request of an unsuccessful applicant, provide written reasons for a decision not to grant the relevant authorisation; and
- (c) provide for adequate procedures to verify the competency of professionals of the other Party.

5. Notwithstanding subparagraph (b) of the definition of **measures adopted or maintained by a Party** in Article 9.1, paragraphs 1 to 3 shall not apply where the relevant measures are the responsibility of non-governmental bodies. However, each Party shall encourage such non-governmental bodies to comply with the requirements of paragraphs 1 to 3.

6. 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. The Parties agree to coordinate on such negotiations as appropriate.

#### **Article 9.9: Recognition**

1. Where a Party recognises, 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 this Chapter 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.

2. A Party shall not accord recognition in a manner which would constitute a means of discrimination between countries in the application of its standards or criteria for the authorisation, licensing, or certification of services suppliers, or a disguised restriction on trade in services.

#### **Article 9.10: Emergency Safeguard Measures**

The Parties take note of the multilateral negotiations pursuant to Article X of GATS on the question of emergency safeguard measures. Upon the conclusion of such multilateral negotiations, the Parties shall conduct a review for the purpose of discussing appropriate amendments to this Agreement so as to incorporate the results of such multilateral negotiations.

#### **Article 9.11: Denial of Benefits**

Subject to prior notification, a Party may deny the benefits of this Chapter to:

- (a) service suppliers of the other Party where the service is being supplied by a juridical person that is owned or controlled by persons of a non-Party and the juridical person has no substantial business activities in the territory of the other Party; or
- (b) service suppliers of the other Party where the service is being supplied by a juridical person that is owned or controlled by persons of the denying Party and the juridical person has no substantial business activities in the territory of the other Party.

#### **Article 9.12: Review**

Three (3) years after the entry into force of this Agreement or upon request of a Party and in pursuit of the objectives and purposes of this Chapter, the Commission may review this Chapter, taking into account the developments and regulations on trade in services of the Parties as well as the progress made at the WTO, including discussions regarding Emergency Safeguard Measures and other specialised forums, where both Parties are members.

**Article 9.13: Committee on Trade in Services**

1. The Parties hereby establish a Committee on Trade in Services (hereinafter referred to as “the Committee”).
2. The functions of the Committee shall be:
  - (a) reviewing the implementation and operation of this Chapter;
  - (b) exchanging information on domestic laws and regulations;
  - (c) discussing any issues related to this Chapter as may be agreed upon;
  - (d) reporting the findings of the Committee to the Commission; and
  - (e) carrying out other functions which may be delegated by the Commission pursuant to Article 13.1.4 (Free Trade Commission).