

CHAPTER 11

TRADE IN SERVICES

Article 11.1

Definitions

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repair and maintenance services means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance;

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

- (a) the constitution, acquisition or maintenance of a juridical person; or
- (b) the creation or maintenance of a branch or a representative office,

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

computer reservation system (CRS) 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;

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;

person means a natural or a juridical person;

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 “marketing” shall be limited to market research, advertising and distribution;

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

services includes any service in any sector except services supplied in the exercise of governmental authority; and

trade in services means the supply of a service:

- (a) from the Area of a Party into the Area of the other Party (Cross-border supply: Mode 1);
- (b) in the Area of a Party by a service supplier of that Party to a person of the other Party (Consumption abroad: Mode 2);
- (c) by a service supplier of a Party, through commercial presence in the Area of the other Party (Commercial presence: Mode 3); and
- (d) by a service supplier of a Party, through presence of natural persons of that Party in the Area of the other Party (Presence of natural persons: Mode 4).

Article 11.2

Scope

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 Area of a service supplier of the other Party.
- 2. This Chapter shall not apply to:
 - (a) financial service as defined in Article 12.1; and
 - (b) 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; and
 - (iii) computer reservation system (CRS) services.
- 3. Nothing in this Chapter shall be construed to impose any obligation with respect to:
 - (a) government procurement;
 - (b) subsidies, including grants, provided by a Party or a state enterprise thereof, including government-supported loans, guarantees, and insurance, or to any conditions attached to the receipt or continued receipt of such subsidies, whether or not such subsidies are offered exclusively to domestic services, service consumers or service suppliers, except as provided for in Article 11.9;
 - (c) measures affecting natural persons seeking access to the employment market of a Party; or
 - (d) measures regarding citizenship, nationality, residence or employment on a permanent basis.
- 4. For greater certainty, this Chapter shall not prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, its Area, 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 the other Party under the terms as set out in the Schedule to Annex 11.6 of the Party applying the measures.⁹

Article 11.3

National Treatment

1. In the sectors inscribed in its Schedule to Annex 11.6, 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.¹⁰
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.

Article 11.4

Market Access

1. With respect to market access through the modes of supply identified in Article 11.1, 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 to Annex 11.6.
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 to Annex 11.6, are defined as:

⁹ The sole fact of requiring a visa for natural persons of the other Party and not for those of a non-Party shall not be regarded as nullifying or impairing benefits accruing to the other Party under the terms of a specific commitment.

¹⁰ 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.

- (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;¹¹
- (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 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 11.5

Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 11.3 or 11.4, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Party's Schedule to Annex 11.6.

¹¹ Paragraph 2 (c) does not cover measures of a Party which limit inputs for the supply of services.

Article 11.6

Schedule of Specific Commitments

1. The specific commitments undertaken by each Party under Articles 11.3 and 11.4 are set out in its Schedule to Annex 11.6. With respect to sectors where such commitments are undertaken, each Schedule specifies:

- (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 their entry into force.

2. Measures inconsistent with both Articles 11.3 and 11.4 are inscribed in the column relating to Article 11.4. In this case, the inscription will be considered to provide a condition or qualification to Article 11.3 as well.

Article 11.7

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. Each Party shall ensure that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, including by ensuring 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 licenses 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) at the request of the applicant, provide without undue delay, information concerning the status of the application; and
 - (iv) where practicable, at 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 11.1, paragraphs 1, 3 and 4 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, 3 and 4.

6. If the results of the negotiations related to Article VI.4 of *GATS* enter into effect, the Parties shall jointly review those results with a view to their incorporation into this Agreement, as considered appropriate by the Parties.

Article 11.8

Recognition

1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing or certification of service suppliers, and subject to the requirements of paragraph 4, a Party may recognise the education or experience obtained, requirements met, or licenses or certification granted in the Area of the other Party.

2. Where a Party recognises, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licenses or certifications granted in the Area 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 Area of the other Party.

3. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 2, whether existing or future, shall afford adequate opportunity for the other Party, upon request, 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 or experience obtained, requirements met, or licenses or certifications granted in that other Party's Area should be recognised.

4. 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 11.9

Subsidies

Notwithstanding paragraph 3 (b) of Article 11.2, the Parties shall review the issue of disciplines on subsidies related to trade in services in the light of any disciplines agreed under Article XV of *GATS*, with a view to the incorporation of such disciplines into this Agreement.

Article 11.10

Review

Three years after the entry into force of this Agreement 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 and other specialised forums.

Article 11.11

Denial of Benefits

Subject to prior notification and consultations, 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 substantive business operations in the Area 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 substantive business operations in the Area of the other Party.