

Chapter 7
Cross-Border Trade in Services

Article 101
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 supply of a service;
- (b) the purchase or use of, or payment for, a service;
- (c) the access to and the use of services offered to the public generally, including distribution, transport or telecommunications networks and services, in connection with the supply of a service;
- (d) the presence in its Area 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. This Chapter shall not apply to:

- (a) in respect of air transport services, measures affecting traffic rights, however granted, or measures affecting services directly related to the exercise of traffic rights, other than measures affecting:
 - (i) aircraft repair and maintenance services;
 - (ii) the selling and marketing of air transport services; and
 - (iii) computer reservation system (CRS) services; and

(b) government procurement as defined in Article 144.

3. Articles 103, 106, 110 and 111 shall also apply to measures by a Party affecting the supply of a service by covered investments.

Note: The Parties understand that none of the provisions of this Chapter, including this paragraph and any of its Annexes, is subject to Article 18 (Settlement of Investment Disputes between a Contracting Party and an Investor of the Other Contracting Party) of the BIT.

4. 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 that Party and shall 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. A service supplied in the exercise of governmental authority means a service which is supplied neither on a commercial basis nor in competition with one or more service suppliers.

6. Annex 7 provides for supplementary provisions to this Chapter, including scope of application and definitions, and the BIT, on measures by a Party affecting trade in financial services.

Note: For the purposes of this paragraph, "trade in financial services" refers to trade in financial services as defined in subparagraph 1(f) of Article 2 of Annex 7.

Article 102 Definitions

1. For the purposes of this Chapter:

(a) the term "aircraft repair and maintenance services" means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from services and does not include so-called line maintenance;

- (b) the term "computer reservation system (CRS) 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;
- (c) the term "covered investments" means, with respect to a Party, investments of an investor of the other Party in the Area of the Party existing on the date of entry into force of this Agreement or established, acquired or expanded thereafter;
- (d) the term "cross-border trade in services" or "cross-border supply of services" means the supply of a service:
 - (i) from the Area of a Party into the Area of the other Party;
 - (ii) in the Area of a Party by a person of that Party to a person of the other Party; or
 - (iii) by a national of a Party in the Area of the other Party;
- (e) the term "enterprise of a Party" means an enterprise constituted or organized under the laws of a Party;
- (f) the term "existing" means in effect on the date of entry into force of this Agreement, except for entry 35 of Part 1 of Annex 5;
- (g) the term "measure adopted or maintained by a Party" means any measure adopted or maintained by:
 - (i) any level of government or authority of a Party; and
 - (ii) non-governmental bodies in the exercise of powers delegated by any level of government or authority of a Party;
- (h) the term "national" means a natural person who is a national of a Party under its laws;

- (i) the term "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;
- (j) the term "service supplier" means a person that supplies or seeks to supply a service;

Note: Where the service is not supplied or sought to be supplied directly by an enterprise but through its covered investments such as a branch or a representative office, the service supplier (*i.e.* the enterprise) shall, nonetheless, through such covered investments be accorded the treatment provided for service suppliers under this Chapter. Such treatment shall be extended to the covered investments through which the service is supplied or sought to be supplied and need not be extended to any other parts of the service supplier located outside the Area of a Party where the service is supplied or sought to be supplied.

- (k) the term "supply of a service" includes the production, distribution, marketing, sale and delivery of a service; and
- (l) the term "traffic rights" means the rights for scheduled and non-scheduled services to operate and/or to carry passengers, cargo and mail for remuneration or hire from, to, within, or over a Party, including points to be served, routes to be operated, types of traffic to be carried, capacity to be provided, tariffs to be charged and their conditions, and criteria for designation of airlines, including such criteria as number, ownership and control.

2. For the purposes of this Chapter, an enterprise is:

- (a) "owned" by a person if more than 50 percent of the equity interests 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 103 Subsidies

1. Each Party shall promptly and at least annually inform the other Party of the introduction of any new subsidy or grant which significantly affects trade in services covered by its specific commitments under the GATS.

2. A 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. The other Party shall accord sympathetic consideration to such requests.

Note: "Consultations" referred to in this Chapter does not mean consultations under Article 208.

3. If the results of the negotiations referred to in paragraph 1 of Article XV of the GATS (or the results of any similar negotiation undertaken in other multilateral fora in which the Parties participate) enter into force for the Parties, they shall jointly review the results of the negotiations with a view to incorporating into this Chapter, as appropriate, any discipline agreed in such negotiations.

Article 104 National Treatment

Each Party shall accord to services and service suppliers of the other Party treatment no less favorable than that it accords, in like circumstances, to its own services and service suppliers.

Note: For greater certainty, nothing in this Article shall be construed to require either Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

Article 105
Most-Favored-Nation Treatment

Each Party shall accord to services and service suppliers of the other Party treatment no less favorable than that it accords, in like circumstances, to services and service suppliers of any non-Party.

Article 106
Market Access

Neither Party shall maintain or adopt either on the basis of a regional subdivision or on the basis of its entire Area measures defined as:

- (a) limitations on the number of service 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;

Note: This subparagraph does not cover measures of a Party which limit inputs for the supply of services.

- (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 the requirement of an economic needs test; and
- (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

Article 107
Local Presence

Neither Party shall require a service supplier of the other Party to establish or maintain a representative office, a branch or any form of enterprise, or to be resident, in its Area as a condition for the cross-border supply of a service.

Article 108
Non-Conforming Measures

1. Articles 104 through 107 shall not apply to:

- (a) any existing non-conforming measure that is maintained by:
 - (i) with respect to Japan:
 - (A) the central government or a prefecture, as set out in its Schedule in Part 1 of Annex 5; or
 - (B) a local government other than prefectures; and
 - (ii) with respect to Peru:
 - (A) the central government or a regional government, as set out in its Schedule in Part 2 of Annex 5; or
 - (B) a local government;

- (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
- (c) an amendment or modification to any non-conforming measure referred to in subparagraph (a), to the extent that the amendment or modification does not decrease the conformity of the measure, as it existed immediately before the amendment or modification, with Articles 104 through 107.

2. Articles 104 through 107 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 in Annex 6.

Article 109 Notification

1. In the case where a Party makes an amendment or modification to any existing non-conforming measure as set out in its Schedule in Annex 5 in accordance with subparagraph 1(c) of Article 108, the Party shall notify the other Party, as soon as possible, of such amendment or modification.

2. In the case where a Party adopts any measure after the entry into force of this Agreement, with respect to sectors, sub-sectors or activities as set out in its Schedule in Annex 6, the Party shall, to the extent possible, notify the other Party of such measure.

Article 110 Transparency

Further to Chapter 1:

- (a) each Party shall endeavor, to the extent possible, to respond to inquiries from interested persons regarding its regulations relating to the subject matter of this Chapter; and

- (b) where each Party adopts regulations relating to the subject matter of this Chapter, it shall, to the extent possible, publish comments received from the public and results of its consideration with respect to the proposed regulations.

Note: For greater certainty, a Party may consolidate the comments and results, and publish them in a separate document from the one that sets forth the final regulations.

Article 111 Domestic Regulation

1. Where a Party requires authorization for the supply of a service, its competent authorities shall, 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. At the request of the applicant, the competent authorities of that Party shall provide, without undue delay, information concerning the status of the application.

2. With a view to ensuring that any measure adopted or maintained by a Party in any services sector relating to the qualification requirements and procedures, technical standards and licensing requirements of service suppliers of the other Party does not constitute an unnecessary barrier to trade in services, each Party shall ensure that such measure:

- (a) is based on objective and transparent criteria, such as the competence and ability to supply the service;
- (b) is not more burdensome than necessary to ensure the quality of the service; and
- (c) in the case of licensing procedures, is not in itself a restriction on the supply of the service.

3. Paragraph 2 is binding upon a Party only in sectors in which it has undertaken specific commitments in its Schedule under the GATS. Paragraph 2 shall be applied, to the extent possible, to the sectors where a Party has not undertaken specific commitments in its Schedule under the GATS.

Note: For the purposes of this paragraph, the term "sector" means one or more, or all, sub-sectors of the service concerned, as specified in a Party's Schedule under the GATS.

4. The Parties affirm their commitments with respect to the development of any necessary disciplines pursuant to paragraph 4 of Article VI of the GATS. To the extent that any such disciplines are adopted by the WTO Members, the Parties shall review them jointly with a view to incorporating them into this Chapter as appropriate.

Article 112 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 service 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 upon an agreement or arrangement with the country concerned or may be accorded autonomously.

2. Where a Party recognizes, autonomously, or by an agreement or arrangement, the education or experience obtained, requirements met, or licenses or certifications granted in a non-Party, nothing in Article 105 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 other Party.

3. A Party that is a party to an agreement or arrangement referred to in paragraph 2, whether existing or future, shall afford adequate opportunity for the other Party, if that other Party is interested, to negotiate its accession to such an agreement or arrangement, or to negotiate one comparable 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 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 service suppliers, or a disguised restriction on cross-border trade in services.

Article 113 Payments and Transfers

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 Area.

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 or payment.

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.

4. Nothing in this Chapter shall affect the rights and obligations of the Parties as members of the International Monetary Fund under the Articles of Agreement of the International Monetary Fund, including the use of exchange actions which are in conformity with the Articles of Agreement of the International Monetary Fund, provided that a Party shall not impose restrictions on any capital transactions inconsistently with the obligations under this Chapter regarding such transactions, except under Article 13, or at the request of the International Monetary Fund.

Article 114 Implementation

The Parties shall consult to review the implementation of this Chapter and consider other matters of mutual interest affecting cross-border trade in services within the framework of the Commission established under Article 14.

Article 115 Denial of Benefits

1. A Party may deny the benefits of this Chapter to a service supplier of the other Party that is an enterprise of the other Party, where the former Party establishes that the enterprise is owned or controlled by persons of a non-Party, and the former Party:

- (a) does not maintain diplomatic relations with the non-Party; or
- (b) adopts or maintains measures with respect to 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. Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to a service supplier of the other Party that is an enterprise owned or controlled by persons of a non-Party and that has no substantial business activities in the Area of the other Party.