

CHAPTER 13
CROSS-BORDER TRADE IN SERVICES

Article 1
Objectives

The objectives of this Chapter are to:

- (a) facilitate the expansion of cross-border trade in services on a mutually advantageous basis;
- (b) improve the efficiency and transparency of the Parties' respective services sectors and competitiveness of their export trade; and
- (c) work toward progressive liberalisation,

while recognising the right of each Party to regulate and introduce new regulations, and to provide and fund public services, in a manner that gives due respect to government policy objectives.

Article 2
Scope

1. This Chapter shall apply to measures adopted or maintained by a Party affecting cross-border trade in services.
2. In addition to paragraph 1 of this Article, Articles 4 (Market Access), 10 (Transparency) and 12 (Domestic Regulation) shall also apply to measures adopted or maintained by a Party affecting the supply of a service in its jurisdiction by a covered investment, as defined in Chapter 12 (Investment).

3. This Chapter shall not apply to:
- (a) government procurement;
 - (b) services supplied in the exercise of governmental authority;
 - (c) subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance, except as provided for in Article 14; or
 - (d) measures affecting natural persons of a Party seeking access to employment or the employment market of a Party.
4. In accordance with Article 5 (Grant of Temporary Entry) of Chapter 14 (Temporary Entry of Business Persons), commitments in respect of the presence of natural persons of a Party are set out in each Party's Schedule to Annex 6 of Chapter 14 (Temporary Entry of Business Persons).
5. This Chapter shall not apply to measures affecting air transport services or related services in support of air services except that this Chapter shall apply to measures affecting:
- (a) aircraft repair and maintenance services;
 - (b) the selling and marketing of air transport services;
 - (c) computer reservation system services;
 - (d) speciality air services; and

(e) ground handling services.

Article 3

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repair and maintenance services means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and does not include so-called line maintenance;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 the constitution, acquisition or maintenance of an enterprise, including a representative office, within a Party for the purpose of supplying a service;

computer reservation system services means services provided by computerised 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 means the supply of a service:

- (a) from the jurisdiction of one Party into the jurisdiction of the other Party (Mode 1);
- (b) in the jurisdiction of one Party to the service consumer of the other Party (Mode 2); or
- (c) by a service supplier of one Party, through presence of natural persons of a Party in the jurisdiction of the other Party (Mode 4);

but does not include the supply of a service in a Party by an investor of the other Party or a covered investment as defined in Article 2 (Definitions) of Chapter 12 (Investment).

government procurement means any measure relating to the procurement by governmental agencies of services for governmental purposes and not with a view to commercial sale or resale or use in the supply of services for commercial sale or resale;

ground handling services include cargo-handling services provided for freight in special containers, non-containerised freight or for passenger baggage, including services of freight terminal facilities and baggage handling services at airports; aircraft cleaning and disinfecting services; hangar services; and aircraft towing services;

measure adopted or maintained by a Party means any of those measures taken by a Party that are specified in paragraph 3(a) of Article 1 of GATS. Such measures include measures in respect of:

- (i) the purchase, payment or use of a service;
- (ii) the access to and use of, in connection with the supply of a service, services which are required by a Party to be offered to the public generally;
- (iii) the presence of natural persons of a Party for the supply of a service in the other Party.

monopoly supplier of a service means any person, public or private, which in the relevant market of a Party is authorised or established formally or in effect by that Party as the sole supplier of that service;

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 or the applicable conditions;

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;

service supplier of a Party means a person of a Party that supplies, or seeks to supply, a service;

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

speciality air services means air services which are 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; and

supply of a service includes the production, distribution, marketing, sale and delivery of a service.

Article 4

Market Access

Neither Party shall, either on the basis of a regional sub-division or on the basis of its entire jurisdiction, adopt or maintain:

- (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement 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 test¹¹;
- (d) limitations on the total number of natural persons of a Party 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.

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

Article 5
National Treatment

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

Article 6
Most-Favoured-Nation Treatment

1. Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords, in like circumstances, to services and service suppliers of a non-Party.
2. Notwithstanding paragraph 1, the Parties reserve the right to adopt or maintain any measure that accords differential treatment to non-Parties under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.
3. For greater certainty, paragraph 2 includes, in respect of agreements on the liberalisation of trade in goods or services or investment, any measures taken as part of a wider process of economic integration or trade liberalisation between the parties to such agreements.
4. The Parties reserve the right to adopt or maintain any measure that accords differential treatment to non-Parties under any international agreement in force or signed after the date of entry into force of this Agreement involving:

- (a) fisheries;
- (b) maritime matters; or
- (c) aviation.

Article 7

Local Presence

Neither 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 jurisdiction as a condition for the supply of cross-border trade in services.

Article 8

Non-Conforming Measures

1. Articles 4 (Market Access), 5 (National Treatment), 6 (Most-Favoured-Nation Treatment) and 7 (Local Presence) shall not apply to:

- (a) any existing non-conforming measure that is maintained by a Party:
 - (i) as set out by that Party in its Schedule to Annex 4:I; or
 - (ii) maintained by a Party at a regional or 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 Articles 4 (Market Access), 5 (National Treatment), 6 (Most-Favoured-Nation Treatment) and 7 (Local Presence).
- 2. Articles 4 (Market Access), 5 (National Treatment), 6 (Most-Favoured-Nation Treatment) and 7 (Local Presence) do 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 to Annex 4:II.
- 3. Articles 4 (Market Access), 5 (National Treatment), 6 (Most-Favoured-Nation Treatment) and 7 (Local Presence) do not apply to any measure affecting the presence of natural persons of a Party (Mode 4).

Article 9

Review

The Parties shall consult within two years of entry into force of this Agreement and at least every three years thereafter, or as otherwise agreed, to review the implementation of this Chapter and consider other trade in services issues of mutual interest, with a view to the progressive liberalisation of the trade in services between them on a mutually advantageous basis.

Article 10
Transparency

1. Each Party shall publish promptly or otherwise make publicly available international agreements pertaining to or affecting trade in cross-border services to which it is a signatory.
2. Each Party shall respond promptly to all requests by the other Party for specific information on any of its measures of general application which pertain to or affect the operation of this Chapter or international agreements within the meaning of paragraph 1 of this Article.

Article 11
Contact Points

1. Each Party shall designate a contact point for trade in services to facilitate communication between the Parties, and shall provide details of such contact point to the other Party.
2. The Parties shall notify each other promptly of any amendments to the details of their contact points.

Article 12
Domestic Regulation

1. Each Party shall ensure that all measures of general application affecting cross-border 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 cross-border 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 and procedures do not constitute unnecessary barriers to cross-border trade in services, each Party shall ensure that any such measures that it adopts or maintains:
 - (a) are based on objective and transparent criteria, such as competence and the ability to supply the service;
 - (b) are not more burdensome than necessary to ensure the quality of the service; and
 - (c) in the case of licensing and qualification procedures, do not in themselves constitute a restriction on the supply of the service.
4. In determining whether a Party is in conformity with its obligations under paragraph 3, account shall be taken of international standards of relevant international organisations applied by that Party.
5. Where authorisation is required for the supply of a service, each Party shall ensure that its competent authorities:

- (a) in the case of an incomplete application, at the request of the applicant, identify all the additional information that is required to complete the application and provide the opportunity to remedy deficiencies within a reasonable timeframe;
 - (b) within a reasonable period of time after the submission of an application considered complete under domestic law, inform the applicant of the decision concerning the application;
 - (c) to the extent practicable, establish an indicative timeframe for processing of an application;
 - (d) at the request of the applicant, provide, without undue delay, information concerning the status of the application; and
 - (e) if an application is rejected or denied, to the maximum extent possible, inform the applicant in writing and without undue delay the reasons for such action. The applicant will have the possibility of resubmitting, at its discretion, a new application.
6. Each Party shall ensure its competent authorities, where appropriate, accept copies of documents authenticated in accordance with domestic law, in place of original documents.
7. If licensing or qualification requirements include the completion of any examination, each Party shall ensure that:
- (a) the examination is scheduled at reasonably frequent intervals;
 - (b) a reasonable period of time is provided to enable interested persons to submit an application.

8. Each Party shall ensure that any licensing fees¹² and qualification fees charged by the competent authority for the completion of relevant application procedures are reasonable, transparent and commensurate with the administrative costs incurred by the authority, including those for activities related to regulation and supervision of the relevant service.
9. Each Party shall provide for adequate procedures to verify the competence of professionals of the other Party.
10. The obligations in paragraphs 5 to 8 shall not apply to measures to the extent that they are subject to scheduling under Articles 4 (Market Access) and 5 (National Treatment) in the Party's schedules to Annex 4:I and 4:II.
11. 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 the Parties participate) enter into effect, the Parties shall jointly review such results. Where the joint review assesses that the incorporation of such results into this Agreement would improve or strengthen the disciplines contained herein, the Parties shall jointly determine whether to incorporate such results into this Agreement.

¹² Licensing fees do not include payments for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

Article 13

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 licences or certification granted in the other Party.
2. Where a Party recognises, autonomously or by agreement or arrangement, the education or experience obtained, requirements met or licences or certification granted in a non-Party, nothing in Article 6 (Most-Favoured-Nation Treatment) shall be construed to require the Party to accord such recognition to the education or experience obtained, requirements met, or licences or certifications granted in 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 licences or certifications granted in that other Party 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 service suppliers, or a disguised restriction on cross-border trade in services.

5. Where appropriate, the Parties agree to facilitate the establishment of dialogue between the relevant experts, regulators and/or industry bodies to share and maintain qualifications recognition processes with a view to encourage the achievement of recognition of qualifications and/or professional registration.
6. Such recognition may be achieved through harmonisation, recognition of regulatory outcomes, recognition of qualifications and professional registration awarded by one Party as a means of complying with the regulatory requirements of the other Party (whether accorded autonomously or by mutual arrangement) or recognition arrangements concluded between the Parties and between industry bodies.

Article 14

Subsidies

Notwithstanding paragraph 3(c) of Article 2 (Scope):

- (a) the Parties shall review the issue of disciplines on subsidies related to cross-border 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; and
- (b) a Party which considers that it is adversely affected by a subsidy of the other Party related to cross-border trade in services may request consultations on such matters. The Parties shall enter into such consultations.

Article 15

Monopolies and Exclusive Service Suppliers

1. Each Party shall ensure that any monopoly supplier of a service in its jurisdiction does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that Party's obligations under Articles 4 (Market Access), 5 (National Treatment), 6 (Most-Favoured-Nation Treatment) and 7 (Local Presence) except as set out in its Schedules to Annexes 4:I and 4:II.
2. Where a Party's monopoly supplier of a service competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights, the Party shall ensure that such a supplier does not abuse its monopoly position to act in its jurisdiction in a manner inconsistent with that Party's obligations under Articles 4 (Market Access), 5 (National Treatment), 6 (Most-Favoured-Nation Treatment) and 7 (Local Presence) except as set out in its Schedules to Annexes 4:I and 4:II.
3. If a Party has reason to believe that a monopoly supplier of a service of the other Party is acting in a manner inconsistent with paragraphs 1 or 2, that Party may request the other Party establishing, maintaining or authorising such supplier to provide specific information concerning the relevant operations.
4. This Article shall also apply to cases of exclusive service suppliers, where a Party, formally or in effect:
 - (a) authorises or establishes a small number of service suppliers; and

- (b) substantially prevents competition among those suppliers in its jurisdiction.

Article 16

Transfer and Payments

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 jurisdiction.
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.
3. Notwithstanding paragraphs 1 and 2 of this Article, 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;
 - (e) ensuring compliance with orders or judgments in judicial or administrative proceedings; or

- (f) social security, public retirement or compulsory savings schemes.

Article 17

Denial of Benefits

Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to a service supplier of the other Party where the Party establishes that:

- (a) the service is being supplied by an enterprise that is owned or controlled by persons of a non-Party and the enterprise has no substantive business operations in the other Party; or
- (b) the service is being supplied by an enterprise that is owned or controlled by persons of the denying Party and the enterprise has no substantive business operations in the other Party.