

CHAPTER 7
CROSS BORDER TRADE IN SERVICES

Article 7.1
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repair and maintenance services” means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance;

“computer reservation system (CRS) 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” 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 an investor of the other Party or a covered investment as defined in Article 12.1 (Definitions) of Chapter 12 (Investment) ;

“enterprise” means an entity constituted or organised under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including a corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organisation and a branch of an enterprise;

“enterprise of a Party” means an enterprise constituted or organised under the law of a Party, and a branch located in the territory of a Party, and carrying out substantive business activities there;

“financial service” is as defined in Article 10.1 (Definitions) of Chapter 10 (Financial Services);

“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;

“service supplier” means a person of a Party that seeks to supply or supplies a service; and

“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 7.2
Scope and Coverage

1.
 - (a) This Chapter applies to measures by a Party affecting cross-border trade in services by service suppliers of the other Party.
 - (b) Measures covered by subparagraph (a) include measures affecting:
 - (i) the production, distribution, marketing, sale and delivery of a service;
 - (ii) the purchase or use of, or payment for, a service;
 - (iii) 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, including distribution, transport, or telecommunications networks and services; and
 - (iv) the presence in its territory of a service supplier of the other Party.
 - (c) For the purposes of this Chapter, “measures by a Party” means measures taken by:
 - (i) central, regional or local governments and authorities; and
 - (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities.
2. Articles 7.4 (Market Access) and 7.7 (Domestic Regulation) also apply to measures by a Party affecting the supply of a service in its territory by an investor of the other Party or a covered investment as defined in Article 12.1 (Definitions) of Chapter 12 (Investment Chapter)¹⁷.
3. This Chapter does not apply to:
 - (a) government procurement; and

¹⁷ The Parties understand that nothing in this Chapter, including this paragraph, is subject to investor-state dispute settlement pursuant to Section 12-B (Investor-State Dispute Settlement) of Chapter 12 (Investment).

- (b) subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance, or any conditions attached to the receipt or continued receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to domestic services, service consumers or service suppliers.
- 4. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.
- 5. This Chapter does not apply to services supplied in the exercise of governmental authority within the territory of each respective Party.
- 6. Nothing in this Chapter shall prevent a Party from applying measures to regulate the entry of natural persons of the other Party 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 the other Party under the terms of this Chapter¹⁸.
- 7. This Chapter shall not apply to financial services except that paragraph 2 shall apply where the service is supplied by an investor or investment of the other Party that is not an investor or an investment in a financial institution (as defined in Article 10.1 (Definitions) of Chapter 10 (Financial Services) in the Party's territory.
- 8. This Chapter shall not apply to air services, including domestic and international air transportation services, whether scheduled or non-scheduled, and related services in support of air services, other than measures affecting:
 - (a) aircraft repair and maintenance services;
 - (b) selling and marketing of air transport services; and
 - (c) computer reservation system (CRS) services.
- 9. Each Party retains the right to regulate and to introduce new regulations to meet legitimate policy objectives in a manner consistent with this Chapter.

Article 7.3

National Treatment¹⁹

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

¹⁸ The sole fact of requiring a visa for natural persons of certain countries and not for those of others shall not be regarded as nullifying or impairing benefits under the Agreement.

¹⁹ This Article shall not be construed to require either Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant service suppliers.

Article 7.4
Market Access

A Party shall not adopt or maintain, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

- (a) limit 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) limit the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) limit 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 test²⁰;
- (d) limit 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) restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

Article 7.5
Local Presence

A Party shall not 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 7.6
Non-Conforming Measures

1. Articles 7.3 (National Treatment), 7.4 (Market Access), and 7.5 (Local Presence) do not apply to:
 - (a) any existing non-conforming measure that is maintained by a Party, as set out by that Party in its Schedule to Annex 7-A;
 - (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

²⁰ This paragraph does not cover measures of a Party which limit inputs for the supply of services.

measure, as it existed at the date of the entry into force of this Agreement, with Article 7.3 (National Treatment), Article 7.4 (Market Access), and Article 7.5 (Local Presence).

2. Article 7.3 (National Treatment), Article 7.4 (Market Access), and Article 7.5 (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 7-B.

Article 7.7

Domestic Regulation

1. Each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.
2. With a view to ensuring that domestic regulation, including measures relating to qualification requirements and procedures, technical standards and licensing requirements, do not constitute unnecessary barriers to trade in services, the Parties shall endeavour 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. Where authorisation is required for the supply of a service, the competent authorities of a Party shall promptly, after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Party shall provide, without undue delay, information concerning the status of the application.
4. If the results of the negotiations related to Article VI:4 of the GATS (or the results of any similar negotiations undertaken in other multilateral fora in which the Parties participate) enter into effect for the Parties, 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 7.8

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 services suppliers, and subject to the requirements of paragraph 4, a Party may recognise the education or experience

obtained, requirements met, or licences or certifications granted in a particular country or customs territory, including the other Party and non-Parties. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the country or customs territory concerned or may be accorded autonomously.

2. Where a Party recognises, autonomously or by agreement or arrangement, the education or experience obtained, requirements met or licences or certifications granted in the territory of a non-Party, nothing 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 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 the other Party is interested, to negotiate its accession to such an agreement or arrangement or to negotiate comparable ones with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that education, experience, licences, or certifications obtained or requirements met in that other Party's territory should be recognised.
4. A Party shall not accord recognition in a manner which would constitute a means of discrimination between countries or customs territories 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 7.9 **Transfers 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 territory.
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 on the date 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 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 offenses;

- (e) ensuring compliance with orders or judgments in judicial or administrative proceedings; or
 - (f) social security, public retirement or compulsory savings schemes.
4. Nothing in this Chapter shall affect the rights and obligations of the members of the *International Monetary Fund* under the *Articles of Agreement of the International Monetary Fund*, including the use of exchange actions which are consistent with such *Articles of Agreement*, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its obligations under this Chapter regarding such transactions, except under Article 18.6 (Restrictions to Safeguard the Balance-of-Payments) of Chapter 18 (Institutional, General and Final Provisions) or at the request of the *International Monetary Fund*.

Article 7.10

Denial of Benefits

A Party may deny the benefits of this Chapter to a service supplier of the other Party if the service is being supplied by an enterprise that has no substantive business operations in the territory of the other Party and it is owned or controlled by persons of a non-Party or the denying Party.

Article 7.11

Review of Commitments

1. If, after this Agreement enters into force, a Party enters into any agreement on trade in services with a non-Party, it shall give positive consideration to a request by the other Party for the incorporation herein of treatment no less favourable than that provided under the aforesaid agreement.
2. If, after this Agreement enters into force, a Party further liberalises any of its non-conforming measures in Annex 7-A or sectors, subsectors, or activities in Annex 7-B unilaterally, it shall give positive consideration to a request by the other Party for the incorporation herein of the unilateral liberalisation.
3. Parties shall discuss in the Joint Committee any request made under paragraph 1 or paragraph 2.
4. If, after this Agreement enters into force, a service previously supplied in the exercise of governmental authority is subsequently supplied on a commercial basis or in competition with one or more service suppliers, the Party concerned may modify or add to its reservations in respect of that service. At the request of the other Party, the Party concerned shall enter into consultations with a view to ensuring the maintenance of the overall balance of commitments undertaken by each Party under this Agreement.