

CHAPTER TEN CROSS-BORDER TRADE IN SERVICES

ARTICLE 10.1: SCOPE AND COVERAGE

1. This Chapter applies 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 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 distribution, transport, or telecommunications networks and services in connection with the supply of a service; and
 - (d) the provision of a bond or other form of financial security as a condition for the supply of a service.
2. For purposes of this Chapter, **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.
3. Articles 10.4, 10.7, and 10.8 also apply to measures by a Party affecting the supply of a service in its territory by a BIT investment.
4. This Chapter does not apply to:
 - (a) financial services as defined in Article 11.21 (Financial Services, Definitions), except that paragraph 3 shall apply where the service is supplied by a BIT investment that is not a BIT investment in a financial institution (as defined in Article 11.21 (Financial Services, Definitions)) in the Party's territory;
 - (b) air services, including domestic and international air transportation services, whether scheduled or non-scheduled, and related services in support of air services, other than:
 - (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service; and
 - (ii) specialty air services;
 - (c) procurement; or
 - (d) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance.
5. This Chapter does 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 its territory, and does not confer any right on that national with respect to that access or employment.
6. This Chapter does not apply to services supplied in the exercise of governmental authority within the territory of each respective Party. A service supplied in the exercise of governmental authority means any service that is supplied neither on a commercial basis, nor in competition with one or more service suppliers.

ARTICLE 10.2: NATIONAL TREATMENT

1. Each Party shall accord to service suppliers of the other Party treatment no less favorable than it accords, in like circumstances, to its own service suppliers.
2. The treatment to be accorded by a Party under paragraph 1 means, with respect to a regional level of government, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that regional level of government to service suppliers of the Party of which it forms a part.

ARTICLE 10.3: MOST-FAVORED-NATION TREATMENT

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

ARTICLE 10.4: MARKET ACCESS

1. Neither Party may adopt or maintain, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:
 - (a) impose limitations on:
 - (i) the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers, or the requirement of an economic needs test;
 - (ii) the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
 - (iii) the total number of service operations or on 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 test;¹ or
 - (iv) 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; or
 - (b) restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

ARTICLE 10.5: 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 territory as a condition for the cross-border supply of a service.

ARTICLE 10.6: NON-CONFORMING MEASURES

1. Articles 10.2, 10.3, 10.4, and 10.5 do not apply to:
 - (a) any existing non-conforming measure that is maintained by a Party at:
 - (i) the central level of government, as set out by that Party in its Schedule to Annex I;

¹ This clause does not cover measures of a Party that limit inputs for the supply of services.

- (ii) a regional level of government, as set out by that Party in its Schedule to Annex I; or
 - (iii) a 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 10.2, 10.3, 10.4, or 10.5.
2. Articles 10.2, 10.3, 10.4, and 10.5 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 II.
3. Annex 10-A sets out specific commitments by the Parties.

ARTICLE 10.7: DOMESTIC REGULATION

1. Where a Party requires authorization for the supply of a service, the Party's competent authorities shall, within a reasonable period 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 the Party shall provide, without undue delay, information concerning the status of the application. This obligation shall not apply to authorization requirements that are within the scope of Article 10.6.2.
2. 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, each Party shall endeavor 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. 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 for both 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 10.8: TRANSPARENCY IN DEVELOPMENT AND APPLICATION OF REGULATIONS²

Further to Chapter 17 (Transparency):

1. Each Party shall establish or maintain appropriate mechanisms for responding to inquiries from interested persons regarding its regulations relating to the subject matter of this Chapter.

² The Parties understand that "regulations" includes regulations establishing or applying to licensing authorization or criteria.

2. If a Party does not provide advance notice of and opportunity for comment on proposed regulations relating to the subject matter of this Chapter pursuant to Article 17.1 (Publication), it shall, to the extent possible, address in writing the reasons therefore.

3. At the time it adopts final regulations relating to the subject matter of this Chapter, a Party shall, to the extent possible, including upon request, address in writing substantive comments received from interested persons with respect to the proposed regulations.

4. To the extent possible, each Party shall allow reasonable time between publication of final regulations relating to the subject matter of this Chapter and their effective date.

ARTICLE 10.9: MUTUAL RECOGNITION

1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorization, licensing, or certification of services 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, including the other Party and non-Parties. 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 agreement or arrangement, the education or experience obtained, requirements met, or licenses or certifications granted in the territory of a non-Party, nothing in Article 10.3 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.

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 a comparable one with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that education, experience, licenses, or certifications obtained or requirements met in that other Party's territory should be recognized.

4. Neither Party may 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 services suppliers, or a disguised restriction on trade in services.

5. Annex 10-B applies to measures adopted or maintained by a Party relating to the licensing or certification of professional service suppliers as set out in that Annex.

ARTICLE 10.10: 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 at the time of transfer.

3. Notwithstanding paragraphs 1 and 2, a Party may prevent a transfer or payment through the equitable, non-discriminatory, and good faith application of its law 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; or
- (e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

ARTICLE 10.11: DENIAL OF BENEFITS

1. 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 owned or controlled by persons of a non-Party, and the denying Party:

- (a) does not maintain diplomatic relations with the non-Party; or
- (b) adopts or maintains measures with respect to the non-Party or a person of 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 Article 19.5 (Consultations), 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 substantial business activities in the territory of the other Party and persons of a non-Party, or of the denying Party, own or control the enterprise.

ARTICLE 10.12: IMPLEMENTATION

The Parties shall meet annually, and as otherwise agreed, on any issues or questions of mutual interest arising from the implementation of this Chapter.

ARTICLE 10.13: DEFINITIONS

For purposes of this Chapter:

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 a BIT investment;

enterprise means an enterprise as defined in Article 1.3 (Definitions), and a branch of an enterprise;

enterprise of a Party means an enterprise organized or constituted under the laws of a Party; and a branch located in the territory of a Party and carrying out business activities there;

professional services means services, the supply of which requires specialized post-secondary education, or equivalent training or experience, and for which the right to practice is granted or restricted by a Party, but does not include services supplied by trades-persons or vessel and aircraft crew members;

service supplier means a person that seeks to supply or supplies a service;³ and

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.

³ The Parties understand that for the purposes of Articles 10.2 and 10.3, “service suppliers” has the same meaning as “services and service suppliers” as used in Articles II and XVII of GATS.

ANNEX 10-A
EXPRESS DELIVERY SERVICES

1. For purposes of this Agreement, **express delivery services** means the collection, transport, and delivery of documents, printed matter, parcels, goods, or other items on an expedited basis, while tracking and maintaining control of these items throughout the supply of the service. Express delivery services do not include (1) air transport services, (2) services supplied in the exercise of government authority, and (3) maritime transport services.⁴

2. The Parties confirm their desire to maintain at least the level of open market access for express delivery services existing on the date this Agreement is signed. If a Party considers that the other Party is not maintaining such level of access, it may request consultations. The other Party shall afford adequate opportunity for consultations and, to the extent possible, shall provide information in response to inquiries regarding the level of access and any related matter.

3. Each Party shall ensure that, where a Party's monopoly supplier of postal services competes, either directly or through an affiliated company, in the supply of express delivery services outside the scope of its monopoly rights, such supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with the Party's obligations under Articles 10.2, 10.3, or 10.4. The Parties also reaffirm their obligations under Article VIII of GATS.

4. Each Party confirms that it has no intention to direct revenues derived from the supply of postal monopoly services to confer an advantage to its own or any other competitive supplier of express delivery services.

⁴ For greater certainty, for the United States, "express delivery services" do not include delivery of letters subject to the Private Express Statutes (18 U.S.C. 1693 et seq., 39 U.S.C. 601 et seq.), but do include delivery of letters subject to the exceptions to, or suspensions promulgated under, those statutes, which permit private delivery of extremely urgent letters.

ANNEX 10-B
PROFESSIONAL SERVICES

Development of Professional Standards

1. The Parties shall encourage the relevant bodies in their respective territories to develop mutually acceptable standards and criteria for licensing and certification of professional service suppliers and to provide recommendations on mutual recognition to the Joint Committee established under Chapter Eighteen (Administration of the Agreement).
2. The standards and criteria referred to in paragraph 1 may be developed with regard to the following matters:
 - (a) education - accreditation of schools or academic programs;
 - (b) examinations - qualifying examinations for licensing;
 - (c) experience - length and nature of experience required for licensing;
 - (d) conduct and ethics - standards of professional conduct and the nature of disciplinary action for non-conformity with those standards;
 - (e) professional development and re-certification - continuing education and ongoing requirements to maintain professional certification;
 - (f) scope of practice - extent of, or limitations on, permissible activities;
 - (g) local knowledge - requirements for knowledge of such matters as local laws, regulations, language, geography, or climate; and
 - (h) consumer protection - including alternatives to residency requirements, such as bonding, professional liability insurance, and client restitution funds, to provide for the protection of consumers.
3. On receipt of a recommendation referred to in paragraph 1, the Joint Committee shall review the recommendation within a reasonable period to determine whether it is consistent with this Agreement. Based on the Joint Committee's review, each Party shall encourage its respective competent authorities, where appropriate, to implement the recommendation within a mutually agreed time.

Temporary Licensing

4. Where the Parties agree, each Party shall encourage the relevant bodies in its territory to develop procedures for the temporary licensing of professional service suppliers of the other Party.

Review

5. The Joint Committee shall, at least once every three years, review the implementation of this Annex.

September 14, 2004

Washington, D.C.

The Honorable Robert B. Zoellick
United States Trade Representative

Dear Ambassador Zoellick:

I have the honor to confirm the following understanding reached between the delegations of the Kingdom of Bahrain and the United States of America in the course of negotiations regarding Chapter Ten (Cross-Border Trade in Services) of the Free Trade Agreement between our Governments signed this day:

During the negotiations, the delegations of Bahrain and the United States discussed the objectives of protecting public morals, preventing fraud, and deterring crime that underlie much regulation of gambling and betting services at the central and regional levels. Such regulations will generally fall within the exceptions provided under subparagraphs (a) and (c)(i) of Article XIV of GATS, as incorporated into the Agreement.

In Bahrain, all gambling and provision of gambling services is prohibited and treated as a criminal offense.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an integral part of the Agreement.

Sincerely,

Abdulla Hassan Saif

Washington, D.C.
September 14, 2004

H.E. Abdulla Hassan Saif
Minister of Finance and National Economy
Kingdom of Bahrain

Dear Minister Saif:

I am pleased to receive your letter of today's date, which reads as follows:

"I have the honor to confirm the following understanding reached between the delegations of the Kingdom of Bahrain and the United States of America in the course of negotiations regarding Chapter Ten (Cross-Border Trade in Services) of the Free Trade Agreement between our Governments signed this day:

During the negotiations, the delegations of Bahrain and the United States discussed the objectives of protecting public morals, preventing fraud, and deterring crime that underlie much regulation of gambling and betting services at the central and regional levels. Such regulations will generally fall within the exceptions provided under subparagraphs (a) and (c)(i) of Article XIV of GATS, as incorporated into the Agreement.

In Bahrain, all gambling and provision of gambling services is prohibited and treated as a criminal offense.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an integral part of the Agreement."

I have the honor to confirm that the understanding referred to in your letter is shared by my Government, and that your letter and this letter in reply shall constitute an integral part of the Agreement.

Sincerely,

Robert B. Zoellick

Washington, D.C.
September 14, 2004

H.E. Abdulla Hassan Saif
Minister of Finance and National Economy
Kingdom of Bahrain

Dear Minister Saif:

I have the honor to confirm the following understanding reached between the delegations of the United States of America and the Kingdom of Bahrain in the course of negotiations regarding Chapter Ten (Cross-Border Trade in Services) of the Free Trade Agreement between our Governments signed this day:

No provision of this Agreement shall be construed as imposing any obligation on a Party regarding its measures concerning immigration (including with respect to visas) or, except as provided in Chapter Fifteen (Labor), the right to secure employment in the territory of a Party.

I would be grateful if you would confirm that this understanding is shared by your Government.

Sincerely,

Robert B. Zoellick

September 14, 2004

Washington, D.C.

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United States Trade Representative

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Abdulla Hassan Saif