

CHAPTER 9

CROSS-BORDER TRADE IN SERVICES

Article 9.1 Definitions

For the purposes of this Chapter:

“aircraft repair and maintenance services” means those activities when undertaken on an aircraft or a part thereof while the aircraft or part is withdrawn from service and does not include so-called line maintenance;

“airport operation services” means the operation or management, on a fee or contract basis, of airport infrastructure, including terminals, runways, taxiways and aprons, parking facilities, and intra-airport transportation systems. For greater certainty, airport operation services do not include the ownership of, or investment in, airports or airport lands, or any of the functions carried out by a board of directors. Airport operation services do not include air navigation services;

“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” or **“cross-border supply of services”** means the supply of a service:

- (a) from the territory of a Party into the territory of the other Party;
- (b) in the territory of a 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 covered investment;

“enterprise” means an enterprise as defined in Article 1.3 (General Definitions – Initial Provisions and General Definitions), or a branch of that enterprise;

“enterprise of a Party” means:

- (a) an enterprise constituted or organised under the law of that Party or a branch located in the territory of that Party, that carries out substantial business activities in the territory of that Party;¹ or

¹ An enterprise shall be deemed to carry out substantial business activities in the territory of a Party if it has a genuine link to the economy of that Party. As to whether an enterprise has a genuine link

- (b) an enterprise of a non-party owned or controlled by a person of a Party,² if any of its vessels are registered in accordance with the laws and regulations of that Party and flying the flag of that Party, when supplying services using those vessels;

“ground handling services” means the supply, on a fee or contract basis, of the following services: airline representation, administration, and supervision, ground administration and supervision, including load control and communications; passenger handling; baggage handling; ramp services; air cargo and mail handling; fuel and oil handling; flight operations, crew administration and flight planning; aircraft servicing and cleaning; surface transport; and catering services. Ground handling services do not include: self-handling; security; line maintenance; fixed intra-airport transport systems; aircraft repair and maintenance; or the operation or management of essential centralised airport infrastructure, such as baggage handling systems, de-icing facilities, or fuel distribution systems;

“measures of a Party” means measures adopted or maintained by:

- (a) central, regional, or local governments or authorities; or
- (b) non-governmental bodies in the exercise of powers delegated by central, regional, or local governments or authorities;

“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; and

“specialty air services” means a specialised commercial operation using an aircraft whose primary purpose is not the transportation of goods or passengers, such as aerial fire fighting, aerial advertising, flight training, sightseeing, spraying,

to the economy of a Party, this should be established by an overall examination, on a case-by-case basis, of the relevant circumstances. These circumstances may include whether the enterprise:

- (a) has a continuous physical presence, including through ownership or rental of premises, in the territory of that Party;
- (b) has its central administration in the territory of that Party;
- (c) employs staff in the territory of that Party; and
- (d) generates turnover and pays taxes in the territory of that Party.

² For the avoidance of doubt, “person of a Party” in this subparagraph means a national or an “enterprise of a Party” as defined in subparagraph (a).

surveying, mapping, photography, parachute jumping, glider towing, helicopter-lift for logging and construction, and other airborne agricultural, industrial, and inspection services.

Article 9.2

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 9.3

Scope

1. This Chapter shall apply to measures of a Party affecting cross-border trade in services by service suppliers of the other Party. Those measures include measures affecting:
 - (a) the production, distribution, marketing, sale, or 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 a Party to be offered to the public generally;
 - (d) the presence in a Party's territory 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. In addition to paragraph 1:

- (a) Annex 9A (Professional Services and Recognition of Professional Qualifications) shall also apply to measures of a Party affecting the supply of professional services, including by a covered investment;
 - (b) Annex 9B (Express Delivery Services) shall also apply to measures of a Party affecting the supply of express delivery services, including by a covered investment; and
 - (c) Annex 9C (International Maritime Transport Services) shall also apply to measures of a Party affecting the supply of international maritime transport services.
3. This Chapter shall not apply to:
- (a) financial services as defined in Article 11.1 (Definitions – Financial Services);
 - (b) government procurement;
 - (c) services supplied in the exercise of governmental authority;
 - (d) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance, except as provided for in Article 9.10 (Subsidies); or
 - (e) audio-visual services.
4. This Chapter shall not impose any obligation on a Party with respect to a national of the other Party who seeks access to its employment market or who is employed on a permanent basis in its territory, and does not confer any right on that national with respect to that access or employment.³
5. This Chapter shall not apply to air services, including domestic and international air transportation services, whether scheduled or non-scheduled, or to related services in support of air services, other than the following:
- (a) aircraft repair and maintenance services;
 - (b) the selling and marketing of air transport services;
 - (c) computer reservation system services;
 - (d) specialty air services;⁴

³ For greater certainty, this Chapter shall not apply to measures regarding citizenship, nationality, or residence on a permanent basis.

⁴ Subject to compliance with the Parties' respective laws and regulations governing the admission of aircraft to, departure from, and operation within, their territory.

- (e) airport operation services; and
 - (f) ground handling services.
6. If the Annex on Air Transport Services of GATS is amended, the Parties shall conduct a review for the purpose of discussing appropriate amendments to this Agreement, in accordance with Article 33.3 (Amendments – Final Provisions).
7. In the event of any inconsistency between this Chapter and a bilateral, plurilateral, or multilateral air services agreement to which both Parties are party, the air services agreement shall prevail in determining the rights and obligations of the Parties.
8. If the Parties have the same obligations under this Agreement and a bilateral, plurilateral, or multilateral air services agreement, a Party may invoke the dispute settlement procedures of this Agreement only after any dispute settlement procedures in the other agreement have been exhausted.

Article 9.4 **Market Access**

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

- (a) imposes a limitation 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; or
 - (iii) 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;⁵ or
- (b) restricts or requires a specific type of legal entity or joint venture through which a service supplier may supply a service.

⁵ Subparagraph (a)(iii) shall not cover measures of a Party which limit inputs for the supply of services.

Article 9.5
National Treatment

1. Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords to its own like services and service suppliers.⁶
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 9.6
Most-Favoured-Nation Treatment

Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords to like services and service suppliers of a non-party.⁷

Article 9.7
Local Presence

Neither Party shall 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 9.8
Non-Conforming Measures

1. Articles 9.4 (Market Access) to Article 9.7 (Local Presence) shall not apply to:
 - (a) any existing non-conforming measure that is maintained by a Party at:

⁶ Obligations 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.

⁷ For greater certainty, this paragraph does not cover treatment accorded by the United Kingdom to services and service suppliers of territories for whose international relations the United Kingdom is responsible.

- (i) the central or regional level of government, as set out by that Party in its Schedule to Annex I (Cross-Border Trade in Services and Investment Non-Conforming Measures); or
 - (ii) 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 9.4 (Market Access) to Article 9.7 (Local Presence).
2. Articles 9.4 (Market Access) to Article 9.7 (Local Presence) shall not apply to any measure of a Party with respect to sectors, sub-sectors, or activities, as set out by that Party in its Schedule to Annex II (Cross-Border Trade in Services and Investment Non-Conforming Measures).

Article 9.9

Payments and Transfers

1. Each Party shall permit all transfers and payments that relate 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 transfers and payments that relate to the cross-border supply of services to be made in a freely usable currency at the market rate of exchange that prevails at the time 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 law that relates to:
 - (a) bankruptcy, insolvency, or the protection of the rights of creditors;
 - (b) issuing, trading, or dealing in securities, futures, or derivatives;
 - (c) criminal or penal offences;
 - (d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;
 - (e) ensuring compliance with orders or judgments in judicial or administrative proceedings; or

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

Article 9.10

Subsidies

Notwithstanding subparagraph 3(d) of Article 9.3 (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 those disciplines into this Agreement, in accordance with Article 33.3 (Amendments – Final Provisions); 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 those matters. The Parties shall subsequently enter into such consultations.

Article 9.11

Denial of Benefits

A Party may deny the benefits of this Chapter to a service supplier of the other Party that is an enterprise of that Party and to services of that service supplier if:

- (a) a non-party or a person of a non-party owns or controls the enterprise; and
- (b) the denying Party adopts or maintains a measure with respect to the non-party or the person of the non-party which prohibits transactions with the enterprise or which would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to services of that enterprise.

Article 9.12

Recognition

1. For the purposes of the fulfilment, in whole or in part, of a Party's standards or criteria for the authorisation, licensing, or certification of service suppliers, and subject to the requirements of paragraph 4, the Party may recognise the education or experience obtained, requirements met, or licences or certifications granted, in the territory of a non-party. That recognition, which may be achieved through harmonisation or otherwise, may be based on an

agreement or arrangement with the non-party concerned, or may be accorded autonomously.

2. If 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 in Article 9.6 (Most-Favoured-Nation Treatment) shall be construed to require the Party to accord recognition to the education or experience obtained, requirements met, or licences or certifications granted, in the territory of the other Party.
3. If a Party is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, the Party shall afford adequate opportunity to the other Party, on request, to negotiate its accession to that agreement or arrangement, or to negotiate a comparable agreement or arrangement. If a Party accords recognition of the type referred to in paragraph 1 autonomously, the Party shall afford adequate opportunity to the other Party to demonstrate that education or experience obtained, requirements met, or licences or certifications granted in that other Party's territory should be recognised.
4. Neither Party shall accord recognition in a manner that would constitute a means of discrimination between the other Party and a non-party in the application of its standards or criteria for the authorisation, licensing, or certification of service suppliers, or a disguised restriction on trade in services.

Article 9.13 **Development Cooperation**

1. Recognising the role that trade in services can play in economic development and poverty reduction, the Parties may engage in cooperative activities to support the participation of developing countries in trade in services.
2. Cooperative activities may include:
 - (a) participating actively in international fora in order to support the participation of developing countries in trade in services;
 - (b) sharing information and experiences and identifying best practices relevant to supporting that participation of developing countries in trade in services; and
 - (c) any other form of cooperation or activities as may be agreed between the Parties.

Article 9.14
Services and Investment Sub-Committee

1. The Services and Investment Sub-Committee, established under Article 30.9 (Sub-Committees – Institutional Provisions), shall be composed of government representatives of each Party.
2. The Sub-Committee shall:
 - (a) review and monitor the implementation and operation of this Chapter and Chapters 10 (Domestic Regulation) to Chapter 15 (Digital Trade);
 - (b) consider ways to further enhance trade and investment between the Parties, including through discussing future amendments to each Party's Schedules to Annex I (Cross-Border Trade in Services and Investment Non-Conforming Measures), Annex II (Cross-Border Trade in Services and Investment Non-Conforming Measures), Annex III (Financial Services Non-Conforming Measures), and Annex 13A (Schedule of Commitments for Temporary Entry of Business Persons); and
 - (c) facilitate the exchange of information between the Parties in relation to the Chapters referred to in subparagraph (a).
3. The Sub-Committee may:
 - (a) make recommendations, or refer matters, to the Joint Committee;
 - (b) refer matters to any working group or any other subsidiary body related to the Chapters referred to in subparagraph 2(a); and
 - (c) consider any other matter related to the Chapters referred to in subparagraph 2(a), including matters referred to it by any working group or any other subsidiary body, or as directed by the Joint Committee.
4. The Sub-Committee shall meet one year after the date of entry into force of this Agreement, and thereafter as agreed by the Parties.
5. The Sub-Committee shall be co-chaired by representatives of each Party and hosted alternatively.
6. The Sub-committee shall report to the Joint Committee with respect to its activities.
7. All decisions and reports of the Sub-Committee shall be made by mutual agreement.

ANNEX 9A

PROFESSIONAL SERVICES AND RECOGNITION OF PROFESSIONAL QUALIFICATIONS

Article 9A.1 Definitions

For the purposes of this Annex:

“legal arbitration, conciliation, and mediation services” means the preparation of documents to be submitted to, the preparation for and appearance before, an arbitrator, conciliator, or mediator in any dispute involving the application and interpretation of law.¹ It does not include arbitration, conciliation, and mediation services in disputes not involving the application and interpretation of law which fall under services incidental to management consulting. It also does not include acting as an arbitrator, conciliator, or mediator; and

“professional qualifications” means qualifications attested by evidence of formal qualifications or professional experience.

Article 9A.2 Scope

This Annex applies to measures of a Party affecting the supply of professional services, including by a covered investment.

Article 9A.3 Recognition of Professional Qualifications

1. If access to or pursuit of a regulated profession² in the jurisdiction of the other Party is contingent upon possession of specific professional qualifications, that Party shall encourage, as appropriate, its relevant bodies to establish and operate systems for recognition of professional qualifications obtained in the other Party's jurisdiction.
2. Nothing in paragraph 1 shall prevent a Party, or a relevant body of a Party, from:
 - (a) negotiating mutual recognition arrangements; or

¹ As a sub-category, international legal arbitration, conciliation, or mediation services refers to the same services when the dispute involves parties from two or more countries.

² “regulated profession” means a profession, the practice of which, including the use of a title or designation, is subject to the possession of specific professional qualifications by virtue of a measure of a Party.

- (b) requiring that natural persons meet additional conditions that apply to the practice of a particular profession in that Party.
- 3. Each Party shall encourage its relevant bodies to take into account, as appropriate, agreements that relate to professional services in the development of systems for the recognition of professional qualifications.

Article 9A.4 **Temporary or Project-Specific Licensing**

A Party may consider, if feasible, taking steps to encourage its relevant bodies to consider implementing procedures for the temporary or project-specific licensing of professional service suppliers of the other Party. Those procedures should not operate to prevent a professional service supplier from gaining a local licence once that supplier satisfies the applicable local licensing requirements.

Article 9A.5 **Dialogues on Professional Qualifications or Facilitation of Licensing Procedures**

- 1. Each Party shall endeavour to identify professional services in respect of which a mutual interest exists in establishing dialogues on professional qualifications or facilitation of licensing procedures. To this end, a Party may consult any of its relevant bodies that it deems appropriate.
- 2. Where mutual interest is identified, each Party shall encourage its relevant bodies that it deems appropriate and that are responsible for the respective areas of mutual interest, to establish dialogues with the relevant bodies of the other Party on professional qualifications or facilitation of licensing procedures.
- 3. These dialogues may consider any appropriate means for achieving progress, including mutual recognition arrangements or other mechanisms.

Article 9A.6 **Architectural Services**

If, pursuant to paragraphs 1 and 2 of Article 9A.5 (Dialogues on Professional Qualifications or Facilitation of Licensing Procedures), a dialogue is established between the relevant bodies of the Parties responsible for regulating the architecture profession, each Party shall encourage those bodies to discuss the potential inclusion of sustainability skills³ as a requirement for recognition.

³ Sustainability skills may include, among others, the study of sustainable design or energy efficiency in the initial training or continuous professional development of architects.

Article 9A.7
Legal Services

1. Nothing in paragraphs 2 to 4 shall affect the right of a Party to regulate and supervise the supply of legal services, referred to in paragraph 2, in a non-discriminatory manner.
2. Paragraph 3 applies to measures of a Party affecting the supply of legal advisory services and legal arbitration, conciliation, and mediation services in relation to:
 - (a) the law of the other Party;
 - (b) other foreign law to the extent the lawyer of the other Party is qualified to practise that law (and not being the law of the host Party); or
 - (c) international law.
3. A host Party shall:
 - (a) allow a national of the other Party, who is professionally qualified and authorised in the other Party, to practise as a lawyer to supply services referred to in paragraph 2, without having to requalify, or be authorised to practise, as a domestic (host Party) lawyer; and
 - (b) not impose disproportionately complex or burdensome administrative or regulatory conditions on, or for, the supply of these services by persons referred to in subparagraph (a).
4. Paragraph 3 shall not include the supply of:
 - (a) legal representation services in matters or proceedings before administrative agencies, the courts, or other duly constituted official tribunals of a Party;
 - (b) legal advisory and legal authorisation, documentation, and certification services supplied by legal professionals entrusted with public functions, such as notaries, and services supplied by bailiffs; or
 - (c) services supplied by patent or trademark attorneys.

Article 9A.8
Legal Services Regulatory Dialogue

1. The Parties recognise that legal services play an essential role in facilitating trade and investment and in promoting economic growth and business confidence.
2. The Parties shall establish a Legal Services Regulatory Dialogue (“Dialogue”) composed of representatives from the legal professions of each Party, including from the relevant bodies in each Party.
3. The objectives of the Dialogue are to:
 - (a) consider any matters affecting the requalification of lawyers of one Party seeking admission to practise in the other Party. Issues in scope for consideration include:
 - (i) academic pre-requisites and additional practical legal training, particularly for experienced lawyers;
 - (ii) requirements for post-qualification supervision;
 - (iii) the feasibility of recognising legal professional qualifications obtained in one Party without the requirement for an aptitude examination or adaptation period to be undertaken in the other Party; and
 - (iv) timeframes for requalification and admission to practise law;
 - (b) share expertise on matters affecting the types of business structures through which lawyers and enterprises of one Party may establish and supply legal services in the other Party, including limited liability partnerships; and
 - (c) share information and knowledge on other regulatory matters affecting the legal profession, including on licensing and standards, joint partnerships, and on wider issues affecting the trade in legal services between the Parties.
4. The Parties shall encourage the Dialogue to meet within two years of the date of entry into force of this Agreement, and thereafter as determined by the Dialogue.
5. The Parties shall encourage the Dialogue to provide the Professional Services Working Group (“Working Group”) with a report on the progress of objectives set out in paragraph 3 and subsequently provide, if requested, updates on any discussions within the Dialogue.

Article 9A.9
Professional Services Working Group

1. The Working Group, established under Article 30.10 (Working Groups – Institutional Provisions), shall be composed of representatives of each Party.
2. The Working Group may invite, as appropriate, relevant experts, including representatives of relevant bodies, to attend meetings.
3. The Working Group may:
 - (a) review and monitor the implementation and operation of this Annex, including with regard to the measures adopted by a Party pursuant to it, and with a view to identifying areas for improvement;
 - (b) exchange information, and facilitate the exchange of information between relevant bodies, on any matters relating to this Annex, including sharing best practices;
 - (c) make recommendations on best practices to the Services and Investment Sub-Committee (“Sub-Committee”); and
 - (d) consider any other issues relating to this Annex including those referred to it by the Sub-Committee or by the Joint Committee, and refer matters to the Sub-Committee, as appropriate.
4. The Working Group shall report to the Sub-Committee.
5. The Working Group shall meet two years after the date of entry into force of this Agreement, and thereafter as agreed by the Parties.

ANNEX 9B

EXPRESS DELIVERY SERVICES

Article 9B.1 Definitions

For the purposes of this Annex:

“express delivery services” means the collection, sorting, 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 air transport services, services supplied in the exercise of governmental authority, or maritime transport services;¹

“postal monopoly” means a measure of a Party making a postal operator within the Party’s territory the exclusive supplier of specified collection, transport, and delivery services; and

“universal service” means the permanent supply of a delivery service of specified quality at all points in the territory of a Party at affordable prices for all users.

Article 9B.2 Scope

1. A Party that allows a postal monopoly shall define the scope of the monopoly on the basis of objective criteria, including quantitative criteria, such as price or weight thresholds.
2. Each Party has the right to define the kind of universal service obligation it wishes to adopt or maintain. A Party that maintains a universal service obligation shall administer it in a transparent, non-discriminatory, and impartial manner with regard to all service suppliers subject to the obligation.

Article 9B.3 Obligations

1. Neither Party shall allow a supplier of services covered by a postal monopoly or a universal service obligation to cross-subsidise its own, or any other competitive supplier’s, express delivery services with revenues derived from the monopoly postal services or the universal service obligation.

¹ For greater certainty, express delivery services does not include:

- (a) for New Zealand, priority domestic mail services;
- (b) for the United Kingdom, services subject to a universal service obligation.

2. Each Party shall ensure that any supplier of services covered by a postal monopoly does not abuse its monopoly position to act in the Party's territory in a manner inconsistent with the Party's commitments under Article 9.4 (Market Access – Cross-Border Trade in Services), Article 9.5 (National Treatment – Cross-Border Trade in Services), Article 14.5 (Market Access – Investment), or Article 14.6 (National Treatment – Investment), with respect to the supply of express delivery services.²
3. Neither Party shall:
 - (a) require an express delivery service supplier of the other Party, as a condition of authorisation or licensing, to supply a universal service; or
 - (b) assess fees or other charges exclusively on express delivery service suppliers for the purpose of funding the supply of another delivery service.³
4. Each Party shall ensure that any authority responsible for regulating express delivery services is not accountable to any supplier of express delivery services, and that the decisions and procedures that the authority adopts are impartial, non-discriminatory, and transparent with respect to all express delivery service suppliers in its territory.

² For greater certainty, a supplier of services covered by a postal monopoly that exercises a right or privilege incidental to, or associated with, its monopoly position in a manner that is consistent with the Party's commitments listed in this paragraph, with respect to express delivery services, is not acting in a manner inconsistent with this paragraph.

³ This paragraph shall not be construed to prevent a Party from imposing non-discriminatory fees on delivery service suppliers on the basis of objective and reasonable criteria, or from assessing fees or other charges on the express delivery services of its own supplier of services covered by a postal monopoly.

ANNEX 9C

INTERNATIONAL MARITIME TRANSPORT SERVICES

Article 9C.1 Definitions

For the purposes of this Annex:

“container station and depot services” means activities consisting of storing, stuffing, stripping, or repairing of containers and making containers available for shipment, whether in port areas or inland;

“customs clearance services” means the carrying out, on a fee or contract basis, of customs formalities concerning import, export, or through transport of cargo, irrespective of whether these services are the main or secondary activity of the service supplier;

“door-to-door or multimodal transport operations” means the transport of cargo using more than one mode of transport, involving an international sea-leg, under a single transport document;

“feeder services” means the pre and onward transportation by sea of international cargo, including containerised, break bulk, and dry or liquid bulk cargo, between ports located in the territory of a Party, provided that the international cargo should be “en route”, that is, directed to a destination, or coming from a port of shipment, outside the territory of that Party;

“international cargo” means cargo transported by seagoing vessels between a port of a Party and a port of the other Party or of a non-party;

“international maritime transport services” means the transport of passengers or cargo by seagoing vessels between a port of a Party and a port of the other Party or of a non-party and includes the direct contracting with suppliers of other transport services, with a view to covering door-to-door or multimodal transport operations, but not the supply of those other transport services;

“international maritime transport services supplier” means a services supplier that seeks to supply, or supplies, international maritime transport services;

“maritime agency services” means the representation, within a given geographic area, as an agent of the business interests of one or more shipping lines or shipping companies, for the following purposes:

- (a) marketing and sales of maritime transport and related services, from quotation to invoicing, issuance of bills of lading on behalf of the shipping lines or shipping companies, acquisition and resale of the

necessary related services, preparation of documentation, and provision of business information; and

- (b) acting on behalf of the shipping lines or shipping companies organising the call of the vessel or taking over cargo when required;

“maritime auxiliary services” means maritime cargo handling services, customs clearance services, container station and depot services, maritime agency services, maritime freight forwarding services, and storage and warehousing services;

“maritime cargo handling services” means the performance, organisation, and supervision of:

- (a) the loading or discharging of cargo to or from a vessel;
- (b) the lashing or unlashings of cargo; and
- (c) the reception or delivery and safekeeping of cargo before shipment or after discharge,

by stevedoring or terminal operator companies, but does not include work performed by dock labour, when this workforce is organised independently of stevedoring or terminal operator companies;

“maritime freight forwarding services” means the organising and monitoring of shipments on behalf of shippers, through the supply of services, including the arrangement of transport and related services, consolidation and packing of cargo, preparation of documentation, and provision of business information; and

“storage and warehousing services” means storage services of frozen or refrigerated goods, bulk storage services of liquids or gases, and other storage or warehousing services.

Article 9C.2

Scope

This Annex shall apply to measures of a Party affecting the supply of international maritime transport services.

Article 9C.3

Obligations

1. Each Party shall:

- (a) accord to vessels supplying an international maritime transport service and flying the flag of the other Party, and international

maritime transport services suppliers of the other Party, treatment no less favourable than that accorded by that Party to its own like vessels or like international maritime transport services suppliers, or to like vessels or like international maritime transport services suppliers of a non-party, with regard to:

- (i) access to ports;
- (ii) the use of port infrastructure and services of ports, such as pilotage, towing and tug assistance, provisioning, fuelling and watering, garbage collecting and ballast waste disposal, port captain's services, navigation aids, emergency repair facilities, anchorage, berth, berthing and unberthing services, and shore-based operational services essential to ship operations, including communications, water, and electrical supplies;
- (iii) the use of maritime auxiliary services;
- (iv) access to customs facilities; and
- (v) the assignment of berths and facilities for loading and unloading,

including related fees and charges;

- (b) permit vessels supplying an international maritime transport service and flying the flag of the other Party, and international maritime transport services suppliers of the other Party, to reposition owned or leased empty containers, that are not being carried as cargo against payment, between ports of that Party, subject to the authorisation by the competent authority where applicable; and

- (c) permit:

- (i) vessels flying the flag of the other Party; and
- (ii) international maritime transport services suppliers of the other Party,

to provide feeder services between ports of that Party, subject to the authorisation by the competent authority where applicable.

- 2. Paragraph 1 shall not apply to a measure to the extent that the measure is not subject to an obligation in Chapter 9 (Cross-Border Trade in Services) or Chapter 14 (Investment) by reason of Article 9.8 (Non-Conforming

Measures – Cross-Border Trade in Services) and Article 14.10 (Non-Conforming Measures – Investment).

3. Neither Party shall:

- (a) adopt or maintain a cargo-sharing arrangement with non-parties concerning maritime transport services, including dry and liquid bulk and liner trade; or
- (b) adopt or maintain a measure that requires all or part of any international cargo to be transported exclusively by vessels registered in that Party or owned or controlled by nationals of that Party.