

Chapter 18: Cross-Border Trade in Services – Text of the 2023 Canada – Ukraine Free Trade Agreement

Article 18.1: Definitions

For the purposes of this Chapter:

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 1.5 (Definitions of General Application), or a branch of an enterprise;

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

professional service means a service, the provision of which requires specialized post-secondary education, or equivalent training or experience, and for which the right to practise is granted or restricted by a Party, but does not include a service provided by a tradesperson, or a vessel or aircraft crew member;

service supplied in the exercise of governmental authority means, for a Party, any service that is supplied neither on a commercial basis nor in competition with one or more service suppliers;

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

speciality air services means a specialized commercial operation using an aircraft whose primary purpose is not the transportation of goods or passengers, such as aerial fire-fighting, flight training, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, and helicopter-lift for logging and construction, and other airborne agricultural, industrial, and inspection services.

Article 18.2: Scope

1. This Chapter applies to measures adopted or maintained by a Party relating to cross-border trade in services by a service supplier of the other Party, including a measure relating to:

- (a) the production, distribution, marketing, sale, or delivery of a service, including by electronic means;*
- (b) the purchase or use of, or payment for, a service, including by electronic means;*
- (c) the access to or use of distribution, transport, or telecommunications networks or services in connection with the supply of a service; or*
- (d) the presence in the Party's territory of a service supplier of the other Party for the supply of a service.*

2. In addition to paragraph 1 and in accordance with Article 17.3 (Relation to Other Chapters), Article 18.5 applies to measures adopted or maintained by a Party relating to the supply of a service in its territory by a covered investment.

3. This Chapter does not apply to:

- (a) financial services as defined in Article 20.1 (Definitions);
- (b) government procurement;
- (c) services supplied in the exercise of governmental authority;
- (d) subsidies or grants provided by a Party or a state enterprise, including government-supported loans, guarantees, and insurance.

4. This Chapter does not apply to air services, including domestic and international air transportation services, whether scheduled or non-scheduled, or to related service in support of air services, other than the following:

- (a) aircraft repair or maintenance services during which an aircraft is withdrawn from service, excluding so-called line maintenance;
- (b) the selling and marketing of air transport services;
- (c) computer reservation system (CRS) services; and

- (d) specialty air services.

5. In the event of any inconsistency between this Agreement and a bilateral, plurilateral, or multilateral air services agreement to which both Parties are party, the air services agreement prevails in determining the rights and obligations of the Parties.

6. If the Parties have the same obligations under this Agreement and a bilateral, plurilateral, or multilateral air services agreement, they may invoke the dispute settlement procedures of this Agreement only after any dispute settlement procedures in the other agreement have been exhausted.

7. If the Annex on Air Transport Services of GATS is amended, the Parties shall jointly review any new definitions with a view to aligning the definitions in this Agreement with those definitions, as appropriate.

8. This Chapter does not impose an 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.

Article 18.3: National Treatment

1. A Party shall accord to a service or service supplier of the other Party treatment no less favourable than that it accords, in like circumstances, to its own services and service suppliers.
2. The treatment to be accorded by a Party under paragraph 1 means, with respect to a government other than at the central level, treatment accorded, in like circumstances, by that government to services or service suppliers of the Party of which it forms a part.
3. Whether treatment referred to in paragraph 1 is accorded in "like circumstances" depends on the totality of the circumstances, including whether the relevant treatment distinguishes between services or services suppliers based on legitimate policy objectives.

Article 18.4: Most-Favoured-Nation

Treatment

1. A Party shall accord to a service or service supplier 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. The treatment to be accorded by a Party under paragraph 1 means, with respect to a government other than at the central level,

treatment accorded, in like circumstances, by that government in its territory to services or service suppliers of a non-Party.

3. Whether treatment referred to in paragraph 1 is accorded in "like circumstances" depends on the totality of the circumstances, including whether the relevant treatment distinguishes between services or services suppliers based on legitimate policy objectives.

Article 18.5: Market Access

1. A Party shall not adopt or maintain, either on the basis of a regional subdivision 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 a numerical quota, monopoly, exclusive service suppliers, or the requirement of an economic needs test;*
 - (ii) the total value of service transactions or assets in the form of a numerical quota or the requirement of an economic needs test;*
 - (iii) the total number of service operations or the total quantity of service output expressed in terms of*

a designated numerical unit in the form of a quota or the requirement of an economic needs test^{Footnote 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 a numerical quota or the requirement of an economic needs test; or
- (b) restricts or requires a specific type of legal entity or joint venture through which a service supplier may supply a service.

Article 18.6: Formal Requirements

1. Article 18.3 does not prevent a Party from adopting or maintaining a measure that prescribes formal requirements in connection with the supply of a service, provided that these requirements are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination. These measures include requirements:

- (a) to obtain a licence, registration, certification, or authorization to supply a service or as a membership

requirement of a particular profession, such as requiring membership in a professional organisation or participation in collective compensation funds for members of professional organisations;

- (b) for a service supplier to have a local agent for service or maintain a local address;
- (c) to speak a national language or hold a driver's licence; or
- (d) that a service supplier:
 - (i) post a bond or other form of financial security;
 - (ii) establish or contribute to a trust account;
 - (iii) maintain a particular type and amount of insurance;
 - (iv) provide other similar guarantees; or
 - (v) provide access to records.

Article 18.7: Reservations

1. Articles 18.3, 18.4 and 18.5 do not apply to:

- (a) an 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;
 - (ii) a regional level of government, as set out by that Party in its Schedule to Annex I; or
 - (iii) at level of government other than at the central and regional level;
- (b) the continuation or prompt renewal of a non-conforming measure referred to in subparagraph (a); or
 - (c) an amendment to a 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 18.3, 18.4 or 18.5.

2. Articles 18.3, 18.4 and 18.5 do not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities as set out by that Party in its Schedule to Annex II.

Article 18.8: Recognition

1. For the purposes of the fulfilment, in whole or in part, of a Party's standards or criteria for the authorization, licensing, or certification

of service suppliers, and subject to the requirements of paragraph 4, a Party may recognize the education or experience obtained, requirements met, or licences or certifications granted in a particular country. This 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. If a Party recognizes, 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, Article 18.4 is not to 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. Parties shall endeavour to publish, by electronic means, relevant information, including appropriate descriptions, concerning a recognition agreement or arrangement that the Party or relevant bodies or authorities in its territory have concluded.

4. A Party that is 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 accession to the agreement or arrangement or to negotiate a comparable one with that other Party. If 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 recognized.

5. A Party shall not 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, certification, or licensing of service suppliers, or a disguised restriction on trade in services.

6. The Parties should seek to ensure that recognition does not require citizenship or any form of residency, or education, experience, or training in the territory of the host jurisdiction.

7. As set out in Annex 18-A (Professional Services), the Parties shall endeavour to facilitate trade in professional services, including through the establishment of a Professional Services Working Group.

Article 18.9: Denial of Benefits

1. A Party may deny the benefits of this Chapter to a service supplier of the other Party if the service supplier is an enterprise owned or

controlled by a person of a non-Party, and the denying Party 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. A Party may deny the benefits of this Chapter to a service supplier of the other Party if the service supplier is an enterprise owned or controlled by a person of a non-Party or by a person of the denying Party that has no substantial business activities in the territory of the other Party.

Article 18.10: Payments and Transfers

1. Each Party shall permit 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 convertible 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 laws that relate to:

- (a) bankruptcy, insolvency, or the protection of the rights of creditors;*
- (b) issuing, trading, or dealing in securities and derivatives;*
- (c) financial reporting or record keeping of transfers if necessary to assist law enforcement or financial regulatory authorities;*
- (d) criminal or penal offences; or*
- (e) ensuring compliance with orders or judgments in judicial or administrative proceedings.*

4. This Article does not preclude the equitable, non-discriminatory, and good faith application of a Party's laws relating to its social security, public retirement, or compulsory savings programs.

Annex 18-A: Professional Services

General Provisions

1. Each Party shall consult with relevant professional bodies or authorities in its territory to seek to identify professional services if the Parties are mutually interested in establishing a dialogue on issues that

relate to the recognition of professional qualifications, licensing, or registration.

2. If a professional service described in paragraph 1 is identified, each Party shall encourage its relevant bodies or authorities to establish dialogues with the relevant bodies or authorities of the other Parties, with a view to facilitating trade in professional services. The dialogues may consider, as appropriate:

- (a) recognition of professional qualifications and facilitating licensing and registration procedures through mutual recognition agreements;
- (b) autonomous recognition of the education or experience obtained by a candidate in the territory of the other Party, for the purposes of fulfilling some or all of the licensing or examination requirements of that profession;
- (c) the development of mutually acceptable standards and criteria for authorization of professional service suppliers from the territory of the other Party, including for education, examinations, experience, continuous professional development and re-certification, scope of practice, conduct and ethics, local knowledge, and consumer protection;

- (d) temporary or project-specific licensing or registration based on a foreign supplier's home license or recognized professional body membership, without the need for further written examination;
- (e) the form of association and procedures by which a foreign-licensed supplier may work in association with a professional service supplier of the Party; or
- (f) any other approaches to facilitate authorization to provide services by professionals licensed in the other Party, including by reference to international standards and criteria.

3. If relevant bodies or authorities enter into discussions for the purpose of creating a Mutual Recognition Agreement pursuant to paragraph 2(a), those discussions may be guided by Appendix 18-A (Guidelines for Mutual Recognition Agreements or Arrangements for Professional Services) for the negotiation of the agreement.

4. If a Mutual Recognition Agreement has been entered into by a relevant body at the national level, each Party shall work with the relevant body to encourage the application and implementation of the Agreement.

5. Any temporary or project-specific licensing or registration of the type referred to in paragraph 2(d) should not operate to prevent a

foreign service supplier from gaining a local licence once that service supplier satisfies the applicable local licensing requirements.

6. Each Party shall encourage its relevant bodies or authorities to take into account agreements that relate to professional services in the development of agreements on the recognition of professional qualifications, licensing, and registration.

7. If applicable, each Party shall encourage its relevant bodies or authorities to recognize through electronic means education or experience obtained or requirements met in the territory of the other Party, including through online portals to apply for recognition, online courses, online registers of licensed individuals, as well as online platforms for continuous professional education and development.

8. Further to any dialogue referred to in paragraphs 2 (a) through (f), each Party shall encourage its respective relevant bodies or authorities to consider undertaking any related activity within a mutually agreed time as well as through electronic means.

Professional Services Working Group

9. The Parties hereby establish a Professional Services Working Group (Working Group), composed of representatives of each Party.

10. The Working Group shall liaise, as appropriate, to support the Parties' relevant bodies or authorities in pursuing the activities listed in paragraph 2 and 4. This support may include providing points of contact, facilitating meetings, and providing information regarding regulation of professional services in the Parties' territories.

11. The Working Group shall meet within one year of the date of entry into force of this Agreement, and afterwards as decided by the Parties, to discuss activities covered by this Annex.

12. The Working Group shall report to the Joint Commission progress undertaken by the Parties pursuant to this Annex, and on the future direction of its work, within 60 days after each meeting.

Appendix 18-A: Guidelines for Mutual Recognition Agreements or Arrangements for Professional Services

Introductory Notes

This Appendix provides practical guidance for governments, relevant bodies, or authorities, or other entities entering into mutual recognition negotiations for regulated professional services sector. These guidelines are non-legally binding and intended to be used by

the Parties on a voluntary basis. They do not modify or affect the rights and obligations of the Parties under this Agreement.

The objective of these guidelines is to facilitate the negotiation of mutual recognition agreements or arrangements (MRAs).

The guidelines listed under this Appendix are provided by way of illustration. The listing of these guidelines is indicative and not intended to be exhaustive or an endorsement of the application of such measures by the Parties.

Section A: Conduct of Negotiations and Relevant Obligations

Opening of Negotiations

1. Entities intending to enter into negotiations towards an MRA are encouraged to inform the Professional Services Working Group established under Annex 18 -A. The following information should be supplied:

- (a) the entities involved in negotiations (for example, governments, organizations in professional services or institutes which have authority, statutory or otherwise, to enter into these negotiations);*
- (b) a contact point to obtain further information;*
- (c) the subject of the negotiations (specific activity covered); and*

- (d) the expected time of the start of negotiations.

Focal Points for Negotiations

2. Entities entering into negotiations towards an MRA shall establish a single point of contact for negotiations.

Results

3. Upon the conclusion of an MRA, the parties to the MRA should inform the Professional Services Working Group, and should supply the following information in its notification:

- (a) the content of a new MRA; or
- (b) the significant modifications to an existing MRA.

Follow-up Actions

4. As a follow-up action to a conclusion of an MRA, parties to the MRA are encouraged to inform the Professional Services Working Group of the following:

- (a) that the MRA complies with the provisions of Chapter 18 (Cross-Border Trade in Services) and Chapter 19 (Development and Administration of Measures);
- (b) measures and actions taken regarding the implementation and monitoring of the MRA; and

- (c) that the text of the MRA is publicly available.

Section B: Form and Content of MRAs

Introductory Note

This Section sets out various issues that may be addressed in MRA negotiations and, if so agreed during the negotiations, included in the MRA. It includes some basic ideas on what a Party might require of foreign professionals seeking to take advantage of an MRA.

Participants

5. The MRA should identify clearly:

- (a) the parties to the MRA (for example, governments, organisations in professional services, or institutes);
- (b) competent authorities or organizations other than the parties to the MRA, if any, and their position in relation to the MRA; and
- (c) the status and area of competence of each party to the MRA.

Purpose of the MRA

6. The purpose of the MRA should be clearly stated.

Scope of the MRA

7. The MRA should set out clearly:

- (a) its definitions;
- (b) its scope in terms of the specific profession or titles and professional activities it covers in the territories of the parties;
- (c) who is entitled to use the professional titles concerned;
- (d) whether the recognition mechanism is based on qualifications, on the license obtained in the jurisdiction of the party of origin or on some other requirement; and
- (e) whether it covers temporary access (including a range of possible duration and conditions for renewal, if applicable), permanent access, or both, to the profession concerned.

MRA Provisions

8. The MRA should clearly specify the qualifications or registration conditions, and their equivalences, to be met for recognition between the parties to the MRA. If the requirements of the various sub-national jurisdictions under an MRA are not identical, the difference and the modalities for the recognition of qualifications between sub-national jurisdictions should be clearly presented.

9. The MRA should seek to ensure that recognition does not require citizenship or any form of residency, or education, experience, or training in the jurisdiction of the host party as a condition for recognition by that host party.

10. The requirements and procedures under the MRA should not discriminate based on age, gender, and race.

Eligibility for Recognition – Qualifications

11. If the MRA is based on recognition of qualifications, then it should, where applicable, state:

- (a) the minimum level of education required (including entry requirements, length of study, and subjects studied);
- (b) the minimum level of experience required (including location, length, and conditions of practical training or supervised professional practice prior to licensing, and framework of ethical and disciplinary standards);
- (c) examinations required, especially examinations of professional competence;
- (d) the extent to which qualifications obtained in the jurisdiction of the party of origin are recognized in the jurisdiction of the host party; and
- (e) the qualifications which the parties to the MRA are prepared to recognize, for instance, by listing particular diplomas or certificates issued by certain institutions, or by reference to particular minimum requirements to be certified by the

authorities of the jurisdiction of the party of origin, including whether the possession of a certain level of qualification would allow recognition for some activities but not others.

Eligibility for Recognition – Registration

12. If the MRA is based on recognition of the licensing, membership, or registration decision made by regulators in the jurisdiction of the party of origin, it should specify the mechanism by which eligibility for this recognition may be established.

Eligibility for recognition – Additional Requirements for Recognition in the Jurisdiction of the Host Party ("Compensatory Measures")

13. If it is considered necessary to provide for additional requirements to ensure the quality of the service, the MRA should set out the conditions under which those requirements may apply, for example, in case of shortcomings in relation to qualification requirements in the jurisdiction of the host party or knowledge of local law, practice, standards, and regulations. This knowledge should be essential for practice in the jurisdiction of the host party or required because there are differences in the scope of licensed practice.

14. If additional requirements are deemed necessary, the MRA should set out in detail what they entail (for example, examination, aptitude test, additional practice in the jurisdiction of the host party or in the

jurisdiction of the party of origin, practical training, and language used for examination).

Mechanisms for Implementation

15. The MRA should state:

- (a) the rules and procedures to be used to monitor and enforce the provisions of the MRA;*
- (b) the mechanisms for dialogue and administrative cooperation between the parties to the MRA; and*
- (c) the means of arbitration for disputes under the MRA.*

16. As a guide to the treatment of individual applicants, the MRA should include details on:

- (a) the focal point of contact in each party to the MRA, for information on all issues relevant to the application (such as the name and address, licensing formalities, and information on additional requirements which need to be met in the jurisdiction of the host party);*
- (b) the duration of procedures for the processing of applications by the relevant authorities of the jurisdiction of the host party;*

- (c) the documentation required of applicants and the form, including by electronic means, in which it should be presented and any time limits for applications;
- (d) acceptance of documents and certificates, including by electronic means if applicable, issued in the jurisdiction of the party of origin in relation to qualifications and licensing;
- (e) the procedures of appeal to or review by the relevant authorities in case of the rejection of an individual application for recognition; and
- (f) the fees that might be reasonably required.

17. The MRA should also include the following commitments:

- (a) that requests about the measures will be promptly dealt with;
- (b) that adequate preparation time will be provided if necessary;
- (c) that any exams or tests will be arranged with reasonable periodicity and accessibility;
- (d) that fees to applicants seeking to take advantage of the terms of the MRA will be in proportion to the cost to the jurisdiction of the host party or organisation; and

- (e) that information on any assistance programs in the jurisdiction of the host party for practical training, and any commitments of the jurisdiction of the host party in that context, be supplied.

18. The MRA could require the parties to the MRA to communicate to their counterpart any new requirements or modifications to existing requirements that might have an impact on the recognition of qualifications under the MRA.

Licensing and Other Provisions in the Jurisdiction of the Host Party

19. If applicable:

- (a) the MRA should also set out the means by which, and the conditions under which, a license is actually obtained following the establishment of eligibility, and what this license entails (such as a license and its content, membership of a professional body, and use of professional or academic titles);
- (b) a licensing requirement, other than qualifications and experience, should include, for example:
 - (i) proof of payment of any required application fees;
 - (ii) a language proficiency requirement;
 - (iii) proof of good conduct and financial standing;

- (iv) professional indemnity insurance in accordance with the laws of the jurisdiction of the host party;
- (v) demonstration of local knowledge of occupational legislation (i.e., Acts, regulations and codes) in the host jurisdiction;
- (vi) compliance with the jurisdiction of the host party's requirements for use of trade or firm names; and
- (vii) compliance with the jurisdiction of the host party's ethics, for instance independence and incompatibility.

Revision of the MRA

20. If the MRA includes terms under which it can be reviewed or revoked, the details of these terms should be clearly stated.

Annex 18-B: Understanding on New Services

Not Classified in the United Nations

Provisional Central Product Classification

(CPC), 1991

1. The Parties agree that Article 18.3, Article 18.4, Article 18.5, and Chapter 19 (Development and Administration of Measures) do not

apply to a measure relating to a new service that cannot be classified in the United Nations Provisional Central Product Classification (CPC), 1991.

2. To the extent possible, each Party shall notify the other Party prior to adopting a measure inconsistent with Article 18.3, Article 18.4, Article 18.5, and Chapter 19 (Development and Administration of Measures) with respect to a new service, as referred to in paragraph 1 of this Annex.

3. At the request of a Party, the Parties shall enter into negotiations to incorporate the new service into the scope of the Agreement.

4. For greater certainty, paragraph 1 of this Annex does not apply to an existing service that could be classified in the United Nations Provisional Central Product Classification (CPC), 1991 but that could not previously be provided on a cross-border basis due to lack of technical feasibility.

Footnotes

Footnote 1

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