

CHILEAN PROPOSAL
CHAPTER XX
CROSS-BORDER TRADE IN SERVICES

Article X.1

Definitions

For the purposes of this Chapter:

aircraft repair and maintenance services during which an aircraft is withdrawn from service means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance;

airport operation services means the supply of air terminal, airfield and other airport infrastructure operation services on a fee or contract basis. Airport operation services do not include air navigation services;

computer reservation system (CRS) services means services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;

cross-border trade in services or **cross-border supply of services** means the supply of a service:

- (a) from the territory of one Party into the territory of the other Party;
- (b) in the territory of one Party, by a person of that Party to a person of the other Party, or
- (c) by a national of a Party in the territory of the other Party,

but does not include the supply of a service in the territory of a Party by a covered investment, as defined in Article X.1 (Definitions);

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

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 includes any service in any sector but not services supplied in the exercise of governmental authority;

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

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;

specialty air services means any non-transportation air services, such as aerial fire-fighting, spraying, sightseeing, surveying, mapping, photography, parachute jumping, glider towing, helicopter-lift for logging and construction, and other airborne agricultural, industrial, and inspection services.

Article X.2

Scope of Application

1. This Chapter shall apply to measures adopted or maintained by a Party affecting cross-border trade in services supplied by service suppliers of the other Party. Such measures include those that affect:

- (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 telecommunication networks, and services in connection with the supply of a service;
- (d) the presence in its 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. For purposes of this Chapter, **measures adopted or maintained by a Party** means the measures adopted or maintained by:

- (a) governments and authorities at all levels;

- (b) non-governmental bodies in the exercise of powers delegated by governments or authorities at all levels.

3. This Chapter does not apply to:

- (a) financial services, as defined in Article X.1 (Chapter XX Financial Services - Definitions);
- (b) audio-visual services;
- (c) national maritime cabotage¹;
- (d) air services², 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 while an aircraft is withdrawn from service;
 - (ii) specialty air services;
 - (iii) the selling and marketing of air transport services;
 - (iv) computer reservation system (CRS) services;
 - (v) ground handling services; and
 - (vi) airport operation services;
- (e) government procurement, as defined in Article X.1 (Chapter XX Government Procurement Definitions);
- (f) subsidies or grants provided by a Party or a state-owned enterprise including government-supported loans, guarantees and insurance; and
- (g) services supplied in the exercise of governmental authority in the territory of each respective Party.

4. In addition to paragraph 1, Articles X.6 (Market Access), X.8 (Transparency) and X.9 (Domestic Regulation) shall also apply to measures adopted or maintained by a Party affecting the supply of a service in its territory by a covered investment³.

¹ According to each Party's legislation.

² For greater certainty, the term "air services" includes traffic rights.

³ For greater certainty, nothing contained in this Chapter, including this paragraph, is subject to Dispute Resolution between one Party and an investor of another Party, pursuant to Section B of Chapter XX (Investment).

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. For greater certainty, nothing in this Chapter may be construed as imposing any obligation on a Party with respect to its immigration measures.

Article X.3

National Treatment

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

2. The treatment to be accorded by a Party pursuant to paragraph 1 means, with respect to a regional or state government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that regional or state government to the services and service suppliers of the Party of which it forms an integral part.

Article X.4

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, in like circumstances, to services and service suppliers of a non-Party state.

Article X.5

Local Presence

Neither Party may require a service supplier of the other Party to establish or maintain a representative office or any other form of enterprise, or to be a resident, in its territory as a condition for the cross-border supply of a service.

Article X.6

Market Access

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 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 test⁴; 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 X.7

Non-Conforming Measures

1. Articles X.3 (National Treatment), X.4 (Most-Favoured-Nation Treatment), X.5 (Local Presence) and X.6 (Market Access) shall not apply to:

- (a) any existing non-conforming measure that is maintained by:
 - (i) the European Union, as set out in its Annex I;
 - (ii) a national government, as set out by that Party in its Annex I;
 - (iii) regional government, as set out by that Party in its Annex I; or
 - (iv) a local government.
- (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or

⁴ This subparagraph does not cover the measures of a Party that limit inputs for the supply of services.

- (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 X.3 (National Treatment), X.4 (Most-Favoured-Nation Treatment), X.5 (Local Presence) and X.6 (Market Access).

2. Articles X.3 (National Treatment), X.4 (Most-Favoured-Nation Treatment), X.5 (Local Presence) and X.6 (Market Access) shall 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.

Article X.8

Transparency

1. Each Party shall establish or maintain appropriate mechanisms for responding to enquiries from interested persons regarding its regulations that relate to the subject matter of this Chapter, pursuant to each Party's laws and regulations concerning transparency⁵.
2. When adopting final regulations relating to the subject matter of this Chapter, each Party shall, to the extent possible, including upon request, address in writing the substantive comments received from interested persons with respect to the proposed regulations.
3. To the extent possible, each Party shall allow a reasonable time between the publication of final regulations and the date when they enter into effect.
4. In the event that a Party undertakes any amendment to any existing non-conforming measure, as stipulated in its Schedule to Annex I pursuant to Article X.7.1 (c) (Non-Conforming Measures), the Party shall notify the other Party of said amendment as soon as possible.
5. In the event that after the implementation of this Additional Protocol, a Party adopts any measure with respect to sectors, subsectors or activities as stipulated in its Schedule to Annex II, the Party shall, to the extent possible, notify the other Party of said measure.

Article X.9

Domestic Regulation

1. Each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

⁵ The implementation of the obligation of establishing appropriate mechanisms shall take into account the budgetary and resource limitations of small administrative bodies.

2. If a Party requires authorisation for the supply of a service, that Party's competent authorities shall:

- (a) identify, to the extent practicable and at the request of the applicant, the additional information required to complete the application in the event of an incomplete application;
- (b) provide the applicant with the opportunity to rectify minor errors and omissions within the application;
- (c) inform the applicant of the decision concerning the application within a reasonable time after the submission of an application considered complete under its laws and regulations;
- (d) establish, to the extent practicable, an indicative timeframe for the processing of an application;
- (e) provide, on request of the applicant and without undue delay, information concerning the status of the application;
- (f) to the extent practicable, inform the applicant if an application is denied, of the reasons for the denial, whether directly or at the request of the applicant;
- (g) to the extent practicable, accept copies of documents that are authenticated in place of original documents, in accordance to their laws; and
- (h) ensure that a licence or an authorisation, once granted, enters into effect without undue delay in accordance with the terms and conditions specified therein.

3. 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 endeavour to ensure that such measures:

- (a) are based on objective and transparent criteria, such as competence and the ability to supply the service;
- (b) are not more burdensome than necessary to ensure the quality of the service; and
- (c) in the case of licensing procedures, are not in themselves a restriction on the supply of the service.

4. Each Party shall ensure that any fee charged by the competent authority to authorise the supply of a service is reasonable, transparent, and does not, in itself, restrict the supply of such service.

5. If the licensing requirements or qualifications include an evaluation, each Party must ensure that:

- (a) the evaluation is scheduled at reasonable intervals; and
- (b) a reasonable time is provided enabling interested persons may submit an application to participate in the evaluation.

6. Each Party shall ensure that there are procedures to verify the competences of professionals of the other Party.

7. Each Party shall ensure, to the extent practicable, that the information concerning the requirements and procedures for issuing licences and qualifications includes the following:

- (a) whether it is necessary to renew the licence or the qualifications for the supply of a service;
- (b) the contact details of the competent authority;
- (c) the requirements, procedures and costs applicable to the issuing of licences and qualifications; and
- (d) the procedures concerning appeals or reviews of applications, if applicable.

8. The Parties recognise their mutual obligations to domestic regulation under Article VI:4 of the GATS and reaffirm their commitment to the development of any necessary disciplines in compliance with that Article. In the case that any of such disciplines is adopted by the members of the WTO or developed in another multilateral forum in which the Parties participate, the Parties shall jointly review them, as appropriate, with a view to determining whether such results should be incorporated into this Additional Protocol.

9. This Article shall not apply to the non-conforming aspects of the measures that may be adopted or maintained by a Party pursuant to Annexes I and II.

Article X.10

Recognition

1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorisation or certification or licensing of service suppliers, and subject to the requirements of paragraph 4, a Party may recognise the education or experience obtained, requirements met or licences or certifications granted, in the territory of the other Party or a non-Party. Such recognition, that may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.

2. When 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 state, nothing in Article X.4 (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 certification granted in the territory of the other Party.

3. 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 to the other Party, if that other Party is interested, to negotiate its accession to that agreement or arrangement, or to negotiate a comparable one with it. When a Party accords recognition autonomously, it shall afford adequate opportunity to the other Party to demonstrate that education, experience, licences or certifications obtained or requirements met in that other Party's territory should be recognised.

4. A Party may not accord recognition in a manner that would constitute a means of discrimination in the application of its standards or criteria for the authorisation, certification or licensing of service suppliers, or a disguised restriction on trade in services.

Article X.11

Mutual Recognition of Professional Qualifications

1. Nothing in this Article shall prevent a Party from requiring that natural persons possess the necessary qualifications and professional experience specified in the territory where the service is supplied, for the sector of activity concerned.

2. The Parties shall encourage the relevant professional bodies or respective authorities as appropriate, in their respective territories to develop and provide a joint recommendation on mutual recognition of professional qualifications to the [Committee] established pursuant to Article X (Specialised Committees). Such a joint recommendation shall be supported by evidence of:

- (a) the economic value of an envisaged agreement on mutual recognition of professional qualifications (hereinafter referred to as "Mutual Recognition Agreement"); and
- (b) the compatibility of the respective regimes, i.e., the extent to which the criteria applied by each Party for the authorisation, licensing, operation and certification of entrepreneurs and service suppliers are compatible.

3. On receipt of a joint recommendation, the [Committee] shall, within a reasonable time, review the joint recommendation with a view to determining whether it is consistent with this Agreement.

4. When, on the basis of the information provided for in paragraph 2, the joint recommendation has been found to be consistent with this Agreement, the Parties shall take necessary steps to negotiate, through their competent authorities or designees authorised by a Party, a Mutual Recognition Agreement.

Article X.12

Subsidies

Notwithstanding the provisions of Article X.2 (Scope of Application):

- (a) The Parties shall periodically exchange information on existing or future subsidies, including grants, tax exemptions or deductions and government-backed loans, guarantees and insurance, related to trade in services.
- (b) The Parties recognise their mutual obligations under Article XV of the GATS and reaffirm their commitment regarding the development of any necessary disciplines according to such article. If any of such disciplines are adopted by members of the WTO or developed in another multilateral forum in which the Parties participate, the Parties shall jointly review them, as appropriate, with a view to determine whether said results should be incorporated into this Agreement.

Article X.13

Complementary Services

The Parties shall endeavour to publish, update and exchange information on their service suppliers that they consider relevant, in particular business services, with the objective to promote the development of value chains within the business sector.

Article X.14

Statistics of Trade in Services

The Parties shall endeavour to encourage their competent authorities to work together to exchange information, share methodologies and publish international trade statistics of the Parties, based on international standards.

Article X.15

Denial of Benefits

Subject to prior notification, one 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 persons of a non-Party state or the denying Party, and the enterprise has no substantial business activities in the territory of the Party other than the denying Party.