

Chapter 9

Cross-Border Trade in Services

Article 9.1: Definitions

For the purposes of this Chapter:

- (a) **aircraft repair and maintenance services** means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and does not include so-called line maintenance (part of CPC 8868);
- (b) **airport operation services** means passenger air terminal services and ground services on air fields, including runway operating services, on a fee or contract basis (excluding cargo handling) (as covered under CPC 7461);
- (c) **computer reservation system services** means services provided by computerised systems that contain information about air carrier's schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued (part of CPC 7523);
- (d) **cross-border trade in services or cross-border supply of services** means the supply of a service:
 - (i) from the territory of one Party into the territory of the other Party;
 - (ii) in the territory of one Party by a person of that Party to a person of the other Party; or
 - (iii) by a national of a Party in the territory of the other Party;but does not include the supply of a service in the territory of a Party by an investor of the other Party or a covered investment;
- (e) **enterprise** means an enterprise as defined in Article 2.1(f) (Definitions of General Application – General Definitions Chapter), and a branch of an enterprise;
- (f) **enterprise of a Party** means an enterprise organised or constituted under the laws of a Party, and a branch located in the territory of a Party and carrying out business activities there;
- (g) **ground handling services** means container handling services for air transport services only (part of CPC 7411); other cargo handling services for air transport services only, including baggage handling (part of CPC 7419); and other supporting services for air transport (CPC 7469);

- (h) **measures adopted or maintained by a Party** means measures adopted or maintained by:
 - (i) central, regional, or local governments and authorities; and
 - (ii) non-governmental bodies in the exercise of powers delegated by central, regional, or local governments or authorities.
- (i) **selling and marketing of air transport services** has the same meaning as defined in paragraph 6(b) of the GATS Annex on Air Transport Services, except that “marketing” shall be limited to market research, advertising and distribution;
- (j) **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;
- (k) **service supplier of a Party** means a person of that Party who seeks to supply or supplies a service; and
- (l) **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.

Article 9.2: 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;
 - (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. Articles 9.5 and 9.8 shall also apply to measures adopted and maintained by a Party affecting the supply of a service in its territory by an investor of the other Party or a covered investment.⁹⁻¹

3. This Chapter does not apply to:

- (a) financial services as defined in Article 12.1(e) (Definitions – Financial Services Chapter);
- (b) government procurement;
- (c) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance;
- (d) services supplied in the exercise of governmental authority within the territory of each respective Party; or
- (e) 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;
 - (ii) the selling and marketing of air transport services;
 - (iii) computer reservation system services;
 - (iv) airport operation services (excluding cargo handling);
 - (v) ground handling services; and
 - (vi) specialty air services.

4. 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.

Article 9.3: National 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 its own services and service suppliers.

⁹⁻¹ For greater certainty, the Parties understand that nothing in this Chapter, including this paragraph, is subject to Investor-State Dispute Settlement pursuant to Section B of Chapter 10 (Investment).

Article 9.4: 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 the services and service suppliers of a non-Party.

Article 9.5: 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 test⁹⁻²; 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 9.6: 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 9.7: Non-Conforming Measures

1. Articles 9.3, 9.4, 9.5 and 9.6 do not apply to:

⁹⁻² Subparagraph (a)(iii) does not cover measures of a Party which limit inputs for the supply of services.

- (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;
 - (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 9.3, 9.4, 9.5 or 9.6.

2. Articles 9.3, 9.4, 9.5 and 9.6 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.

Article 9.8: Domestic Regulation

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

2. Each Party shall ensure that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, including by ensuring that such measures are, *inter alia*:

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

3. Where a Party maintains measures relating to qualification requirements and procedures, technical standards and licensing requirements, the Party shall:

- (a) make publicly available:
 - (i) information on requirements and procedures to obtain, renew or retain any licences or professional qualifications; and

- (ii) information on technical standards;
- (b) where any form of authorisation is required for the supply of a service, ensure that it will:
 - (i) within a reasonable period of time after the submission of an application deemed complete under its domestic laws and regulations, consider the application and make a decision as to whether or not to grant the relevant authorisation;
 - (ii) promptly inform the applicant of the decision whether or not to grant the relevant authorisation;
 - (iii) upon the request of the applicant, provide without undue delay, information concerning the status of the application; and
 - (iv) where practicable, upon the written request of an unsuccessful applicant, provide written reasons for a decision not to grant the relevant authorisation;
- (c) provide for adequate procedures to verify the competency of professionals of the other Party;
- (d) in appropriate professional and other service sectors consider, and where feasible, take steps to implement a temporary or project-specific licensing or registration regime, based on the foreign supplier's home licence or recognised professional body membership (without the need for further written or oral examination) with a view to facilitating temporary access for foreign service suppliers to provide services in relation to specific projects or for limited periods in circumstances where specific expertise is required. Such a temporary or limited licence regime should not operate to prevent a foreign supplier from gaining a local licence subsequent to satisfying the necessary local licensing requirements;
- (e) in each sector where an examination must be passed as a pre-requisite to the provision of a service in the territory of the Party:
 - (i) in the case of examinations administered by government authorities, take reasonable steps to schedule examinations no less frequently than once in every calendar year; or
 - (ii) in the case of examinations solely administered by non-governmental bodies or professional associations, use best efforts to encourage such bodies or associations to schedule examinations no less frequently than once in every calendar year; and

in each case, the Party shall ensure that such examinations are open to applicants of the other Party. The possibility of using electronic means

for conducting such examinations, of conducting such examinations orally, and of providing opportunities for taking such exams in the territory of the other Party should be explored.

4. Notwithstanding Article 9.1(h), paragraphs 1 to 3 above shall not apply where the relevant measures are the responsibility of non-governmental bodies. However, each Party shall encourage such non-governmental bodies to comply with the requirements of paragraphs 1 to 3 above.

5. If the results of the negotiations related to Article VI:4 of GATS enter into effect, the Parties shall jointly review those results with a view to their incorporation into this Agreement, as considered appropriate by the Parties.

Article 9.9: Recognition

1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing, or certification of service suppliers, and subject to the requirements of paragraph 3, a Party may recognise the education or experience obtained, requirements met, or licences or certifications granted in a particular country. Such recognition, which 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. Where a Party recognises, autonomously or by agreement or arrangement, the education or experience obtained, requirements met or licences or certifications granted in the territory of a non-Party:

- (a) nothing in Article 9.4 shall be construed to require the Party to accord such recognition to the education or experience obtained, requirements met or licences or certifications granted in the territory of the other Party; and
- (b) the Party shall accord the other Party an adequate opportunity to demonstrate that the education or experience obtained, requirements met or licences or certifications granted in the other Party should also be recognised.

3. A Party shall not accord recognition in a manner which would constitute a means of discrimination between countries in the application of its standards or criteria for the authorisation, licensing, or certification of services suppliers, or a disguised restriction on trade in services.

Article 9.10: Denial of Benefits

Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to a service supplier of the other Party if the service supplier is an enterprise:

- (a) owned or controlled either by persons of a non-Party or of the denying Party; and
- (b) has no substantive business operations in the territory of the other Party.

Annex 9-A

Professional Services

1. Further to Article 9.9, the Parties agree to support, to the extent that their resources permit, profession-led initiatives that seek to facilitate recognition of the qualifications and or registration/licensing of professionals of the other Party.
2. To that end, the Parties agree to establish contact points and, on the request of either Party, to consult and exchange information on professional qualifications and registration/licensing. Such information may include:
 - (a) relevant professional and regulatory bodies, including contact details;
 - (b) laws, regulations and/or rules relating to professional qualifications, registration/licensing;
 - (c) procedures for recognition of qualifications; and
 - (d) procedures for recognition of registration/licensing.
3. The Parties agree to support profession-led mutual recognition initiatives, if and when required and to the extent to which their resources permit, in ways that are indicated by professional bodies and/or a regulator that may be of assistance to the negotiation of a mutual recognition agreement.