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SUBJECT TO LEGAL REVIEW FOR ACCURACY, CLARITY AND CONSISTENCY
MARCH 1, 2004

CHAPTER TEN
CROSS-BORDER TRADE IN SERVICES

ARTICLE 10.1 : SCOPE AND COVERAGE

1. This Chapter applies to measures adopted or maintained by a Party affecting cross-border trade in services by service suppliers of the other Party. Such measures include measures affecting:

- (a) the production, distribution, marketing, sale, and delivery of a service;
- (b) the purchase or use of, or payment for, a service;
- (c) the access to and use of distribution, transport, or telecommunications networks and services in connection with the supply of a service;
- (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 the purposes of this Chapter, “measures adopted or maintained by a Party” means measures taken by:

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

3. Articles 10.4, 10.7, and 10.8 shall also apply to measures by a Party affecting the supply of a service in the territory of a Party by an investor of the other Party as defined in Article 11.17 of the Investment Chapter or a covered investment.

4. This Chapter does not apply to:

- (a) financial services as defined in Article 13.19 (Definitions), except that paragraph 3 shall apply where the financial service is supplied by an investor of the other Party or a covered investment that is not an investor or a covered investment in a financial institution (as defined in Article 13.19) in the Party’s territory;
- (b) government procurement;

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- (c) air services, including domestic and international air transportation services, whether scheduled or non-scheduled, and related services in support of air services, other than:
 - (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service; and
 - (ii) specialty air services;
- (d) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance; or
- (e) services supplied in the exercise of governmental authority within the territory of each respective Party.

A **service supplied in the exercise of governmental authority** means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.

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.

ARTICLE 10.2 : NATIONAL TREATMENT

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

ARTICLE 10.3 : MOST-FAVOURED-NATION TREATMENT

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

ARTICLE 10.4 : MARKET ACCESS

A Party shall not 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;

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- (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 test;¹ or
 - (iv) the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test; or
- (b) restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

ARTICLE 10.5 : LOCAL PRESENCE

A Party shall not require a service supplier of the other Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border supply of a service.

ARTICLE 10.6 : NON-CONFORMING MEASURES

1. Articles 10.2 (National Treatment), 10.3 (Most-Favoured-Nation), 10.4 (Market Access), and 10.5 (Local Presence) do not apply to:

- (a) any existing non-conforming measure that is maintained by a Party at:
 - (i) the central level of government, as set out by that Party in its Schedule to Annex I;
 - (ii) a regional level of government, as set out by that Party in its Schedule to Annex I; or
 - (iii) a local level of government;
- (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
- (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 10.2

¹⁰⁻¹ This paragraph does not cover measures of a Party which limit inputs for the supply of services.

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(National Treatment), 10.3 (Most-Favoured-Nation), 10.4 (Market Access), or 10.5 (Local Presence).

2. Articles 10.2 (National Treatment), 10.3 (Most-Favoured-Nation), 10.4 (Market Access), and 10.5 (Local Presence) 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 10.7 : DOMESTIC REGULATION

1. Where a Party requires authorization for the supply of a service, the Party's competent authorities shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Party shall provide, without undue delay, information concerning the status of the application. This obligation shall not apply to authorization requirements that a Party adopts or maintains with respect to sectors, sub-sectors, or activities as set out in its Schedule to Annex II.

2. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards, and licensing requirements do not constitute unnecessary barriers to trade in services, each Party shall endeavour to ensure, as appropriate for individual sectors, that such measures are:

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

3. If the results of the negotiations related to Article VI:4 of GATS (or the results of any similar negotiations undertaken in other multilateral fora in which both Parties participate) enter into effect, this Article shall be amended, as appropriate, after consultations between the Parties, to bring those results into effect under this Agreement. The Parties shall coordinate on such negotiations, as appropriate.

ARTICLE 10.8 : TRANSPARENCY IN DEVELOPMENT AND APPLICATION OF REGULATIONS

In addition to the obligations in Chapter Twenty (Transparency):

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

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2. If a Party does not provide advance notice and opportunity for comment pursuant to Article 20.2 (Publication), it shall, to the extent possible, address in writing the reasons therefore.

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

4. To the extent possible, each Party shall provide notice of the requirements of final regulations prior to their effective date

ARTICLE 10.9 : RECOGNITION

1. For the purposes of fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing, or certification of services 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 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 recognizes, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licenses or certifications granted in the territory of a non-Party, nothing in Article 10.3 shall be construed to require the Party to accord such recognition to the education or experience obtained, requirements met, or licenses or certifications granted in the territory of the other Party.

3. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity for the other Party, if the other Party is interested, to negotiate accession to such an agreement or arrangement or to negotiate a comparable one with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that education, experience, licenses, or certifications obtained or requirements met in that other Party's territory should be recognized.

4. 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 authorization, licensing, or certification of services suppliers, or a disguised restriction on trade in services.

5. Annex 10-A (Professional Services) applies to measures by a Party relating to the licensing or certification of professional service suppliers as set out in the provisions of that Annex.

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ARTICLE 10.10 : TRANSFERS AND PAYMENTS

1. Each Party shall permit all transfers and payments relating to the cross-border supply of services to be made freely and without delay into and out of its territory.
2. Each Party shall permit such transfers and payments relating to the cross-border supply of services to be made in a freely usable currency at the market rate of exchange prevailing on the date 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 relating to:
 - (a) bankruptcy, insolvency, or the protection of the rights of creditors;
 - (b) issuing, trading, or dealing in securities, futures, options, or derivatives;
 - (c) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;
 - (d) criminal or penal offences; or
 - (e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

ARTICLE 10.11: DENIAL OF BENEFITS

1. A Party may deny the benefits of this Chapter to a service supplier of the other Party if the service supplier is an enterprise owned or controlled by persons of a non-Party, and the denying Party:
 - (a) does not maintain diplomatic relations with the non-Party; or
 - (b) adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise.
2. 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 persons of a non-Party or of the denying Party that has no substantial business activities in the territory of the other Party.

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ARTICLE 10.12: SPECIFIC COMMITMENTS

Express Delivery Services

1. For purposes of this Agreement, **express delivery services** means the collection, transport, and delivery, of documents, printed matter, parcels, and/or other goods on an expedited basis while tracking and maintaining control of these items throughout the supply of the service. Express delivery services do not include (i) air transport services, (ii) services supplied in the exercise of government authority, and (iii) maritime transport services.²
2. The Parties confirm their desire to maintain at least the level of market openness for express delivery services existing on the date this Agreement is signed. If a Party considers that the other Party is not maintaining such level of access, it may request consultations. The other Party shall afford adequate opportunity for consultations and, to the extent possible, shall provide information in response to inquiries regarding the level of access and any related matter.
3. Each Party confirms its intention to prevent the direction of revenues derived from monopoly postal services to confer an advantage to its own or any other competitive supplier's express delivery services in a manner inconsistent with that Party's laws and practices applicable to the monopoly supply of postal services.
4. For greater certainty, this Agreement, including Articles 14.3 (Designated Monopolies) and 14.5 (State Enterprises and Related Matters), applies to express delivery services.

ARTICLE 10.13: IMPLEMENTATION

The Parties shall meet annually, or as otherwise agreed, on issues related to implementation of this Chapter and any issues of mutual interest.

ARTICLE 10.14 : DEFINITIONS

For the purposes of this Chapter:

¹⁰⁻² For greater clarity, express delivery services do not include:

- (a) for the United States, delivery of letters subject to the Private Express Statutes (18 U.S.C. 1693 et seq., 39 U.S.C. 601 et seq.), but do include delivery of letters subject to the exceptions to, or suspensions promulgated under, those statutes, which permit private delivery of extremely urgent letters; and
- (b) for Australia, services reserved for exclusive supply by Australia Post as set out in the Australian Postal Corporation Act 1989 and its subordinate legislation and regulations, or any amendments thereto.

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1. **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;

2. **enterprise** means any entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including a corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organization; and a branch of an enterprise;

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

4. **freely usable currency** means a currency determined by the International Monetary Fund under its *Articles of Agreement* to be a currency that is, in fact, widely used to make payments for international transactions and is widely traded in the principal exchange markets;

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

6. **service supplier of a Party** means a person of that Party that seeks to supply or supplies a service;³ and

8. **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.

¹⁰⁻³ For the purposes of Articles 10.2 and 10.3, “service suppliers” has the same meaning as “services and service suppliers” as used in Articles II and XVII of GATS.

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ANNEX 10-A
PROFESSIONAL SERVICES

DEVELOPMENT OF PROFESSIONAL SERVICES

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

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TEMPORARY LICENSING

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

WORKING GROUP ON PROFESSIONAL SERVICES

5. The Parties shall establish a Professional Services Working Group, comprising representatives of each Party, to facilitate the activities listed in paragraph 1.

6. In pursuing this objective, the Working Group shall consider, as appropriate, relevant bilateral, plurilateral and multilateral agreements relating to professional services.

7. The issues that the Working Group shall consider, for professional services generally and, as appropriate, for individual professional services, include:

- (a) procedures for fostering the development of mutual recognition arrangements among their relevant professional bodies;
- (b) the feasibility of developing model procedures for the licensing and certification of professional services suppliers; and
- (c) other issues of mutual interest relating to the provision of professional services.

8. To facilitate the efforts of the Working Group, each Party shall consult with the relevant bodies in its territory to seek to identify professional services to which the Working Group should give consideration.

9. The Working Group shall report to the Joint Committee on its progress, including with respect to any recommendations for initiatives to promote mutual recognition of standards and criteria, and on the further direction of its work, within two years of the entry into force of the Agreement.

REVIEW

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