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**March 31, 2004**

**CHAPTER ELEVEN**  
**CROSS BORDER TRADE IN SERVICES**

ARTICLE 11.1: 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 purposes of this Chapter, “measures adopted or maintained by a Party” means measures adopted or maintained 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 11.4, 11.7, and 11.8 shall also apply to measures by a Party affecting the supply of a service in its territory by an investor or covered investment of the other Party as defined in Article 10.27 (Definitions).<sup>1</sup>

4. This Chapter does not apply to:

- (a) financial services as defined in Article 12.19 except as provided in paragraph 3;
- (b) 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  - (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service; and

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<sup>1</sup> The Parties understand that nothing in this Chapter, including this paragraph, shall be subject to Investor-State dispute settlement pursuant to Section B of Chapter Ten (Investment).

**Draft**  
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**March 31, 2004**

- (ii) specialty air services;
- (c) government procurement as defined in Article 9.16 (Definitions); or
- (d) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance.

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. This Chapter does not apply to 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.

**ARTICLE 11.2: NATIONAL TREATMENT**

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

2. The treatment to be accorded by a Party under paragraph 1 means, with respect to a regional level of government, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that regional level of government to service suppliers of the Party of which it forms a part.

**ARTICLE 11.3: MOST-FAVORED-NATION TREATMENT**

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

**ARTICLE 11.4: 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, 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;

**Draft**  
**Subject to Legal Review for Accuracy, Clarity, and Consistency.**  
**March 31, 2004**

- (iii) the total number of service operations or on 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;<sup>2</sup> 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 11.5: 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 11.6: NON-CONFORMING MEASURES**

1. Articles 11.2, 11.3, 11.4, and 11.5 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;
    - (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 11.2, 11.3, 11.4, or 11.5.
2. Articles 11.2, 11.3, 11.4, and 11.5 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.
3. Annex 11-A sets out specific commitments by the Parties.

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<sup>2</sup> This paragraph does not cover measures of a Party which limit inputs for the supply of services.

**Draft**  
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**March 31, 2004**

ARTICLE 11.7: 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 are within the scope of Article 11.6.2.

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 endeavor 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 agree to coordinate on such negotiations, as appropriate.

ARTICLE 11.8: TRANSPARENCY IN DEVELOPMENT AND APPLICATION OF REGULATIONS<sup>3</sup>

Further to Chapter Eighteen (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.<sup>4</sup>

2. If a Party does not provide advance notice and comment pursuant to Article 18.1.2 (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

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<sup>3</sup> The Parties understand that "regulation" includes regulations establishing or applying to licensing authorization or criteria.

<sup>4</sup> Morocco's implementation of its obligation to establish appropriate mechanisms for small administrative agencies may need to take into account resource and budget constraints.

**Draft**  
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**March 31, 2004**

substantive comments received from interested persons with respect to the proposed regulations.

4. To the extent possible, each Party shall allow reasonable time between publication of final regulations and their effective date.

**ARTICLE 11.9: MUTUAL 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 services suppliers, and subject to the requirements of paragraph 4, a Party may recognize the education or experience obtained, requirements met, or licenses or certifications granted in a particular country, including the other Party and non-Parties. Such 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. 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 11.3 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 its 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 11-B (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.

**ARTICLE 11.10: 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 at the time of transfer.

**Draft**  
**Subject to Legal Review for Accuracy, Clarity, and Consistency.**  
**March 31, 2004**

3. Notwithstanding paragraphs 1 and 2, a Party may prevent 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 offenses; or
  - (e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

ARTICLE 11.11: DENIAL OF BENEFITS

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

ARTICLE 11.12: IMPLEMENTATION

The Parties will meet annually, and as otherwise agreed, on any issues or questions of mutual interest arising from the implementation of this Chapter.

ARTICLE 11.13: DEFINITIONS

For purposes of this Chapter:

**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

**Draft**  
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**March 31, 2004**

(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 an investor or covered investment of the other Party as defined in Article 10.27 (Definitions);

**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;

**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;

**professional services** means services, the provision 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 provided by trades-persons or vessel and aircraft crew members;

**central level of government** means:

(a) for the United States, the federal level of government; and

(b) for the Kingdom of Morocco, the national level of government;

**regional level of government** means, for the United States, a state of the United States, the District of Columbia, or Puerto Rico; for the Kingdom of Morocco, “regional level of government” is not applicable;

**service supplier of a Party** means a person of that Party that seeks to supply or supplies a service;<sup>5</sup> and

**speciality 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.

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<sup>5</sup> The Parties understand that for the purposes of Articles 11.2, 11.3, and 11.4 of this Chapter, “service suppliers” has the same meaning as “services and service suppliers” as used in Articles II, XVI, and XVII of GATS.

**Draft**  
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**March 31, 2004**

**ANNEX 11-A**  
**EXPRESS DELIVERY SERVICES**

1. The Parties affirm that measures affecting express delivery services are subject to the provisions of this Agreement.
2. For purposes of this Agreement, express delivery services shall be defined as the expedited collection, transport, delivery, tracking, and maintaining control of documents, printed matter, parcels, and/or other goods throughout the supply of the service. Express delivery services do not include (1) air transport services, (2) services supplied in the exercise of government authority, and (3) maritime transport services.
3. The Parties express their desire to maintain the level of open market access existing on the date this Agreement is signed.
4. Morocco agrees that it will not adopt any restriction on express delivery services that is not in existence on the date this Agreement is signed.
5. International express delivery services, and domestic express delivery services for letters and other materials in excess of one kilogram, are not within the scope of Morocco's postal monopoly. Morocco confirms that it has no intention to direct revenues from its postal monopoly to benefit these services.

**Draft**  
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**ANNEX 11-B**  
**PROFESSIONAL SERVICES**

**DEVELOPMENT OF PROFESSIONAL STANDARDS**

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 service providers 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;
  - (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, language, geography, or climate; and
  - (h) consumer protection - including alternatives to residency requirements, such as 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.

**TEMPORARY LICENSING**

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

**REVIEW**

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**March 31, 2004**

5. The Joint Committee shall, at least once every three years, or upon request of either Party once a year, review the implementation of this Annex.