

CHAPTER TEN

CROSS-BORDER TRADE IN SERVICES

Article 10.01: Definitions

For purposes of this Chapter:

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repair and maintenance services mean these activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance;

computer reservation system (CRS) services mean 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 means providing 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 providing a service in the territory of a Party by a covered investment as defined in Article 9.01 (Investment – Definitions);

enterprise means an enterprise as defined in Article 1.01 (Initial Provisions and General Definitions – Definitions of General Application), 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;

measure adopted or maintained by a Party means a measure adopted or maintained by:

- (a) a national or sub-national government or authority; or
- (b) a non-governmental body exercising a national or sub-national governmental authority;

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 crew member of a vessel or an aircraft;

selling or marketing of an air transport service means opportunities for the air carrier concerned to sell and market freely its air transport services and all aspects of marketing such as market research, advertising and distribution, but does not include the pricing of air transport services nor the applicable conditions; and

service provider of a Party means a person of that Party that seeks to provide or provides a service.

Article 10.02: Scope of Application

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

- (a) producing, distributing, marketing, selling and delivering of a service;
- (b) purchasing, using or paying for a service;
- (c) accessing and using a distribution, transport or telecommunications network and service in connection with providing a service;
- (d) the presence in its territory of a service provider of the other Party; or
- (e) requiring a bond or other form of financial security as a condition for providing a service.

2. This Chapter does not apply to:

- (a) a financial service as defined in Chapter Twelve (Financial Services);
- (b) an air service or related service in support of air services, other than:
 - (i) an aircraft repair and maintenance service,
 - (ii) the selling or marketing of an air transport service, or
 - (iii) a computer reservation system (CRS) service;
- (c) procurement by a Party or a state enterprise; or
- (d) a subsidy or grant provided by a Party or a state enterprise, including a government-supported loan, guarantee or insurance.

3. This Chapter does not impose an 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, or confer any right on that national with respect to that access or employment.

Article 10.03: National Treatment

1. Each Party shall accord to a service provider of the other Party treatment no less favourable than that it accords in like circumstances to its own service providers.

2. The treatment accorded by a Party under paragraph 1 means, with respect to a measure adopted or maintained by a sub-national government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that sub-national government to service providers of the Party of which it forms a part.

3. The treatment accorded by a Party under paragraph 1 extends to a relevant service provided by that service provider.

Article 10.04: Most-Favoured-Nation Treatment

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

2. The treatment accorded by a Party under paragraph 1 extends to a relevant service provided by that service provider.

Article 10.05: Market Access

A Party may not adopt or maintain a measure that:

- (a) imposes limitations on:
 - (i) the number of service providers, whether in the form of a numerical quota, monopoly, exclusive service provider or by requiring 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, or
 - (iv) the total number of natural persons that may be employed in a particular service sector or that a service provider may employ and who are necessary for, and directly related to, the provision 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 provider may provide a service.

Article 10.06: Local Presence

A Party may not require as a condition for the cross-border provision of a service that a service provider of the other Party:

- (a) establish or maintain a representative office or an enterprise in its territory;
or
- (b) be resident in its territory.

Article 10.07: Reservations

1. Articles 10.03, 10.04, 10.05 and 10.06 do not apply to:

- (a) an existing non-conforming measure that is maintained by a Party at the level of the:
 - (i) national government as set out in its Schedule to Annex I, or
 - (ii) a sub-national government;
- (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) provided that this amendment does not decrease the conformity of the measure as it existed immediately before the amendment, with Articles 10.03, 10.04, 10.05 and 10.06.

2. Articles 10.03, 10.04, 10.05 and 10.06 do not apply to a measure that a Party adopts or maintains with respect to a sector, subsector or activity, as set out in its Schedule to Annex II.

Article 10.08: Domestic Regulation

The Parties note their mutual obligations related to domestic regulation in Article VI:4 of the GATS and affirm their commitment to develop necessary disciplines under Article VI:4. If any of those disciplines are adopted by the WTO Members, the Parties will, as appropriate, jointly review them to determine whether this Article needs to be supplemented.

Article 10.09: Recognition

1. For the purposes of fulfillment, in whole or in part, of its standards or criteria for the authorization, licensing or certification of services providers, and subject to the requirements of paragraph 3, a Party may recognize the education or experience obtained, requirements met, or licenses or certifications granted in a particular country. That recognition, which may be achieved through harmonization or otherwise, may be based on an agreement or arrangement with the country concerned or may be accorded autonomously.
2. 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 that agreement or arrangement or to negotiate a comparable agreement or arrangement. Where 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.
3. 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, licensing or certification of services providers, or a disguised restriction on trade in services.

4. The Parties shall encourage their relevant professional service bodies in their respective territories to:

- (a) exchange information on existing standards and criteria for the authorization, licensing and certification of professional service providers; and
- (b) consider the use of the standards and criteria of Annex 10.09 in discussions for a potential agreement or arrangement referred to in paragraph 1.

Article 10.10: Denial of Benefits

Subject to prior notification in accordance with Article 20.03 (Transparency – Notification and Provision of Information):

- (a) the benefits of this Chapter shall be denied to a service provider of the other Party where the Party establishes that the service is being provided by an enterprise owned or controlled by a national of a non-Party, and the denying Party adopts or maintains a measure with respect to the non-Party that prohibits transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise; and
- (b) a Party may deny the benefits of this Chapter to a service provider of the other Party if the service provider is an enterprise owned or controlled by a person of a non-Party that has no substantial business activities in the territory of the other Party.

Article 10.11: Transfers and Payments

1. Each Party shall permit transfers and payments relating to the cross-border provision of services to be made freely and without delay into and out of its territory.

2. Each Party shall permit transfers and payments relating to the cross-border provision 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 domestic law relating to:

- (a) bankruptcy, insolvency or the protection of the rights of a creditor;
- (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) a criminal or penal offence; or
- (e) ensuring compliance with an order or judgment in judicial or administrative proceedings.

Annex 10.09

Professional Services

Development of Professional Standards

1. The Parties shall encourage the relevant professional 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 Commission.

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 permissible activities 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 – alternatives to nationality or residency requirements to protect consumers, including bonding, professional liability insurance and client restitution funds.

3. On receipt of a recommendation referred to in paragraph 1, the Commission shall review the recommendation within a reasonable time to determine whether it is consistent with this Agreement. If the Commission determines that the recommendation is consistent with this Agreement, each Party shall encourage its respective competent authorities, where appropriate, to implement the recommendation within a time determined by the Parties.

Temporary licensing

4. If the Parties decide, each Party shall encourage the relevant bodies in its territory to develop procedures for the temporary licensing of a professional service provider of the other Party.