

Chapter 10 Trade in Services

Article 10.1: Definitions

For purposes of this Chapter:

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

- (a) from the territory of a Party into the territory of the other Party;
- (b) in the territory of a 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 an investor of the other Party or an investment of an investor of the other Party as defined in Article 11.1 (Definitions);

enterprise means any legal entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally owned, 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 operations there;

monopoly supplier of a service means any person, public or private, which in the relevant market of the territory of a Party is authorized or established formally or in effect by that Party as the sole supplier of that service;

services includes any service in any sector except services supplied in the exercise of governmental authority;

service consumer means any person that receives or uses a service;

service of the other Party means a service which is supplied:

- (a) from or in the territory of the other Party, or in the case of maritime transport, by a vessel registered under the laws of the other Party, or by a person of the other Party which

supplies the service through the operation of a vessel and/or its use in whole or in part; or

- (b) in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of the other Party;

service supplier of a Party means a person of that Party that seeks to supply or supplies a service¹⁰; and

supply of a service includes the production, distribution, marketing, sale and delivery of a service.

Article 10.2: Scope and Coverage

1. (a) This Chapter applies to measures adopted or maintained by a Party affecting cross-border trade in services by service suppliers of the other Party.
- (b) Measures covered by subparagraph (a) include measures affecting:
 - i. the production, distribution, marketing, sale and delivery of a service;
 - ii. the purchase or use of, or payment for, a service;
 - iii. the access to and use of distribution, transport, or telecommunications networks and services in connection with the supply of a service;
 - iv. the presence in its territory of a service supplier of the other Party; and
 - v. the provision of a bond or other form of financial security as a condition for the supply of a service.
- (c) For purposes of this Chapter, measures adopted or maintained by a Party means measures adopted or maintained by:
 - i. central, regional or local governments and authorities; and

¹⁰ The Parties understand that for purposes of Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment), and Article 10.5 (Market Access) of this Agreement, “service suppliers” has the same meaning as “services and service suppliers” as used in GATS.

- ii. non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities.

2. Articles 10.5 (Market Access) and 10.8 (Domestic Regulation) also apply to measures by a Party affecting the supply of a service in its territory by an investor of the other Party or an investment of an investor of the other Party as defined in Article 11.1 (Definitions)¹¹.

3. This Chapter does not apply to:

- (a) government procurement as defined in Article 8.2 (Definitions) of Chapter 8 (Government Procurement);
- (b) air services¹², 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;
 - ii. the selling and marketing of air transport services;
 - iii. computer reservation system (CRS) services;
- (c) subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance, or to any conditions attached to the receipt or continued receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to domestic services, service consumers or service suppliers.

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 nor shall it apply to measures regarding citizenship or residence on a permanent basis.

- 5. (a) This Chapter does not apply to services supplied in the exercise of governmental authority in a Party's territory.
- (b) For purposes of this Chapter, 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.

¹¹ The Parties understand that nothing in this Chapter, including this paragraph, is subject to investor-State dispute settlement pursuant to Article 11.16 (Investor-State Dispute Settlement) of Chapter 11 (Investment).

¹² For greater certainty, the term "air services" includes traffic rights.

6. Nothing in this Chapter shall prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under the terms of this Chapter¹³.

7. This Chapter shall not apply to financial services¹⁴. The Parties reaffirm their commitments under GATS with respect to financial services.

8. The rights and obligations of the Parties with respect to telecommunications services shall be governed by this Chapter and Annex 10.1 (Telecommunications Services).

Article 10.3: 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 10.4: 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 10.5: 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;

¹³ The sole fact of requiring a visa for natural persons of the other Party shall not be regarded as nullifying or impairing benefits under a specific commitment.

¹⁴ For purposes of this paragraph, "financial services" is as defined in subparagraph 5 (a) of the Annex on Financial Services in GATS.

- 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 test¹⁵;
 - 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; and
- (b) restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

Article 10.6: 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 10.7: Non-Conforming Measures

1. Articles 10.3 (National Treatment), 10.4 (Most-Favoured-Nation Treatment), 10.5 (Market Access), and 10.6 (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 (Non-Conforming Measures); or
 - ii. 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 10.3 (National

¹⁵ This subparagraph does not cover measures of a Party which limit inputs for the supply of services.

Treatment), 10.4 (Most-Favoured-Nation Treatment), 10.5 (Market Access), and 10.6 (Local Presence).

2. Articles 10.3 (National Treatment), 10.4 (Most-Favoured-Nation Treatment), 10.5 (Market Access), and 10.6 (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 (Non-Conforming Measures).

Article 10.8: 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 10.7.2 (Non-Conforming Measures).

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 for both Parties, 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 10.9: Recognition

1. For purposes of the fulfillment, in whole or in part, of its standards or criteria for the authorization, 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 10.4 (Most-Favoured-Nation Treatment) 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 comparable ones 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.

Article 10.10: Monopolies and Exclusive Service Suppliers

1. Each Party shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that Party's obligations under Articles 10.3 (National Treatment), 10.4 (Most-Favoured-Nation Treatment) and 10.5 (Market Access).

2. Where a Party's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that Party's obligations under Articles 10.3 (National Treatment) and 10.5 (Market Access), the Party shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such obligations.

3. If a Party has reason to believe that a monopoly supplier of a service of the other Party is acting in a manner inconsistent with paragraph 1 or 2, it may request the other Party establishing, maintaining or authorizing such supplier to provide specific information concerning the relevant operations.

4. The provisions of this Article shall also apply to cases of exclusive service suppliers, where a Party, formally or in effect:

- (a) authorizes or establishes a small number of service suppliers; and
- (b) substantially prevents competition among those suppliers in its territory.

Article 10.11: 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 laws 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;
- (e) ensuring compliance with orders or judgments in judicial or administrative proceedings; or
- (f) social security, public retirement or compulsory savings schemes.

4. Nothing in this Chapter shall affect the rights and obligations of the members of the International Monetary Fund under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its obligations under this Chapter regarding such transactions, except under Article 18.5 (Restrictions to Safeguard the Balance of Payments) or at the request of the Fund.

Article 10.12: Denial of Benefits

Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to:

- (a) a service supplier of the other Party if the service supplier is an enterprise owned or controlled by persons of a non-Party and such enterprise has no substantive business operations in the territory of the other Party; or
- (b) a service supplier of the other Party if the service supplier is an enterprise owned or controlled by persons of the denying Party and such enterprise has no substantive business operations in the territory of the other Party.