

CHAPTER 7 CROSS-BORDER TRADE IN SERVICES

ARTICLE 7.1: SCOPE

1. This Chapter shall apply 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 or 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 7.4, 7.7, and 7.8 shall also apply to measures adopted or maintained by a Party affecting the supply of a service in its territory by a covered investment.⁹

3. This Chapter shall not apply to:

- (a) financial services as defined in Article 8.20 (Definitions), except that paragraph 2 shall apply where the financial service is supplied by a covered investment that is not a covered investment in a financial institution as defined in Article 8.20 (Definitions) in a Party's territory;
- (b) government procurement;
- (c) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance; or
- (d) 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;

⁹ For greater certainty, the scope of application of Articles 7.4, 7.7, and 7.8 to measures adopted or maintained by a Party affecting the supply of a service in its territory by a covered investment is limited to the scope specified in this Article, subject to any applicable non-conforming measures and exceptions.

- (ii) the selling and marketing of air transport services;
- (iii) computer reservation system services; and
- (iv) specialty air services.

The Parties note the multilateral negotiations pursuant to the review of the GATS Annex on Air Transport Services. Upon the conclusion of such multilateral negotiations, the Parties shall conduct a review for the purpose of discussing appropriate amendments to this Agreement so as to incorporate the results of such multilateral negotiations.

4. This Chapter shall 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 shall not confer any right on that national with respect to that access or employment.

5. This Chapter shall not apply to services supplied in the exercise of governmental authority in a Party's territory. 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 7.2: NATIONAL TREATMENT

1. 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.

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

ARTICLE 7.3: MOST-FAVOURLED-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 7.4: MARKET ACCESS

Neither Party shall 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 test;¹⁰ 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 7.5: LOCAL PRESENCE

Neither Party shall 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 7.6: NON-CONFORMING MEASURES

1. Articles 7.2 through 7.5 shall 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;

¹⁰ Subparagraph (a)(iii) does not cover measures of a Party that limit inputs for the supply of services.

- (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 Article 7.2, 7.3, 7.4 or 7.5.

2. Articles 7.2 through 7.5 shall 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 7.7: DOMESTIC REGULATION

1. Where a Party requires authorisation for the supply of a service, the Party's competent authorities shall, within a reasonable time after the submission of an application considered complete under its laws and regulations, inform the applicant of the decision concerning the application. On request of the applicant, the Party's competent authorities shall provide, without undue delay, information concerning the status of the application. This obligation shall not apply to authorisation 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 the GATS (or the results of any similar negotiations undertaken in other multilateral fora in which the Parties participate) enter into effect, this Article shall be amended, as appropriate, after consultations between the Parties, to bring those results into effect between the Parties under this Agreement. The Parties shall coordinate on such negotiations, as appropriate.

4. Subject to its laws and regulations, a Party shall permit service suppliers of the other Party to use the enterprise names under which they trade in the territory of the other Party and otherwise ensure that the use of the enterprise names is not unduly restricted.

ARTICLE 7.8: TRANSPARENCY IN DEVELOPING AND APPLYING REGULATIONS

Further to Chapter 19 (Transparency):

- (a) each Party shall establish or maintain appropriate mechanisms for responding to enquiries from interested persons regarding its regulations relating to the subject matter of this Chapter; and
- (b) if a Party does not provide, in accordance with Article 19.1.2, advance notice of and opportunity for comment on regulations it proposes to adopt relating to the subject matter of this Chapter, it shall, on request of the other Party, address in writing the reasons for not doing so.

ARTICLE 7.9: 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 5, 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, nothing in Article 7.3 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.

3. On request of the other Party, a Party shall promptly provide information, including appropriate descriptions, concerning any recognition agreement or arrangement that the Party has concluded. For recognition arrangements entered into by relevant bodies in its territory, a Party shall encourage those bodies to provide the same information.

4. 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 that 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 or experience obtained, requirements met, or licences or certifications granted in that other Party's territory should be recognised.

5. 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 authorisation, licensing, or certification of service suppliers, or a disguised restriction on trade in services.

6. Annex 7-A shall apply to measures adopted or maintained by a Party relating to the licensing or certification of professional service suppliers as set out in that Annex.

ARTICLE 7.10: PAYMENTS AND TRANSFERS¹¹

1. Each Party shall permit all payments and transfers 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 payments and transfers 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 the payment or transfer.

3. Notwithstanding paragraphs 1 and 2, a Party may prevent or delay a payment or transfer through the equitable, non-discriminatory, and good faith application of its laws and regulations 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 7.11: 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 adopts or maintains measures with respect to the non-Party

¹¹ For greater certainty, Annex 11-C (Transfers) shall apply to this Article.

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 substantive business operations in the territory of the other Party. If, before denying the benefits of this Chapter, the denying Party knows that the enterprise has no substantive business operations in the territory of the other Party and that persons of a non-Party, or of the denying Party, own or control the enterprise, the denying Party shall, to the extent possible, notify the other Party before denying the benefits. If the denying Party provides such notice, it shall consult with the other Party on request of the other Party.

ARTICLE 7.12: AUDIOVISUAL CO-PRODUCTION

Recognising that audiovisual, including film, animation and broadcasting program co-productions can significantly contribute to the development of the audiovisual industry and to the intensification of cultural and economic exchange between them, the Parties hereby agree on Annex 7-B.

ARTICLE 7.13: DEFINITIONS

For the purposes of this Chapter:

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”;

computer reservation system services means 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 or **cross-border supply of 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 a covered investment;

enterprise means an enterprise as defined in Article 1.4 (Definitions), and a branch of an enterprise;

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;

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

selling and marketing of air transport services means opportunities for the air carrier concerned to sell and market freely its air transport services including 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;

service supplier of a Party means a person of that Party that seeks to supply or supplies a service;¹² and

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.

¹² For the purposes of Articles 7.2 and 7.3, “service suppliers” has the same meaning as “services and service suppliers” as used in Articles II and XVII of GATS.

ANNEX 7-A
PROFESSIONAL SERVICES

1. On request of the other Party, a Party shall provide information concerning standards and criteria for the licensing and certification of professional service suppliers, including information concerning the appropriate regulatory or other body to consult regarding these standards and criteria. These standards and criteria include requirements regarding education, examinations, experience, conduct and ethics, professional development and re-certification, scope of practice, local knowledge, and consumer protection.

2. Each Party shall encourage the relevant bodies in its territory to develop mutually acceptable standards and criteria for licensing and certification, to provide recommendations to the Joint Committee on mutual recognition, and to develop procedures for the temporary licensing arrangements of professional service suppliers of the other Party with respect to the professional services sectors or sub-sectors listed below and any other sectors or sub-sectors that may be mutually agreed by the Parties:

- (a) engineering services;
- (b) architectural services;
- (c) veterinary services;
- (d) healthcare services provided by pharmacists and radiographers; and
- (e) accounting services.

3. The Parties hereby establish a Working Group on Professional Services, comprising representatives of each Party, to facilitate the activities set out in paragraphs 1 and 2. The Working Group shall meet within three years after the date of entry into force of this Agreement unless the Parties otherwise agree.

4. The Working Group should consider, for professional services generally and, as appropriate, for individual professional services:

- (a) procedures for fostering the development of mutual recognition arrangements between relevant professional bodies of the Parties;
- (b) the feasibility of developing model procedures for the licensing and certification of professional service suppliers;
- (c) measures maintained at the central or regional level of government that would prevent the development of a mutual recognition arrangement or

prevent a service supplier of a Party from receiving the benefits of such an arrangement; and

- (d) other issues of mutual interest relating to the supply of professional services.

5. The Working Group shall consider, as appropriate, relevant bilateral, plurilateral, and multilateral agreements relating to professional services.

6. The Working Group shall report to the Joint Committee on its progress, including with respect to any recommendation for initiatives to promote mutual recognition of standards and criteria and temporary licensing, and on the further direction of its work, no later than three years after the date of entry into force of this Agreement.

7. On receipt of a recommendation referred to in paragraphs 2 and 6, 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.

8. The Joint Committee shall review the implementation of this Annex at least once every two years.