

CHAPTER ELEVEN

CROSS-BORDER TRADE IN SERVICES

Article 11.1: Definitions

For the purposes of this Chapter:

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and maintenance services mean these activities when undertaken on an aircraft or a part of an aircraft while it is withdrawn from service and do not include so-called line maintenance;

computer reservation system (CRS) services means services provided by computerized 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 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 provision of a service in the territory of a Party by an investment, as defined in Article 10.1 (Investment – Definitions), in that territory;

enterprise means an enterprise as defined in Article 2.1 (General Definitions - Definitions of General Application), and a branch of an enterprise;

enterprise of a Party means an enterprise that is organized or constituted under the laws of a Party, and a branch of that enterprise, located in the territory of a Party, that carries on business activities there;

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

- (a) a national or sub-national government authority; or
- (b) a non-governmental body exercising 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 practice is granted or restricted by a Party, but does not include a service provided by a tradesperson or crew member of a vessel or aircraft;

selling and marketing of an air transport service 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 or the applicable conditions;

service provider of a Party means a person of a Party that seeks to provide, or provides, a service; and

state enterprise means a state enterprise as defined in Article 2.1 (General Definitions - Definitions of General Application).

Article 11.2: Scope and Coverage

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

- (a) the production, distribution, marketing, sale, or delivery of a service;

- (b) the purchase of, use of, or payment for, a service;
- (c) the access to and use of distribution and transportation systems in connection with the provision of a service;
- (d) the presence in its territory of a service provider of the other Party; and
- (e) the requirement of a bond or other form of financial security as a condition for the provision of a service.

2. This Chapter does not apply to:

- (a) a financial service, as defined in Chapter Thirteen (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 and 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 a national of the other Party employed on a permanent basis in its territory. This Chapter does not confer that national a right with respect to that access or employment.

4. Article 11.6 applies to a measure of a Party affecting the provision of a service in its territory by an investment of an investor of a Party as defined in Article 10.1 (Investment – Definitions).

5. A reservation taken by a Party pursuant to Article 11.7 against Article 11.6 applies to an investment of an investor of that Party covered under paragraph 4.

6. An allegation that a Party has breached Article 11.6 as described in paragraph 4 is not subject to investor-state dispute settlement under Section C of Chapter Ten (Investment – Settlement of Disputes between a Party and an Investor of the Other Party).

Article 11.3: 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.

Article 11.4: Most-Favoured-Nation Treatment

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.

Article 11.5: Local Presence

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

Article 11.6: 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 the requirement of 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, excluding a measure of a Party that limits inputs for the provision of a service, 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 11.7: Reservations

1. Articles 11.3, 11.4, 11.5, and 11.6 do not apply to:
 - (a) an existing non-conforming measure that is maintained by:
 - (i) a 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 the amendment does not decrease the conformity of the measure with Articles 11.2, 11.3 , 11.4 and 11.5 as it existed immediately before the amendment.
2. Articles 11.2, 11.3, 11.4 and 11.5 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 11.8: Domestic Regulation

1. 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 shall, as appropriate, jointly review them with a view to determining whether this Article should be supplemented.

2. Pending the incorporation of disciplines under paragraph 1, the Parties shall aim to ensure that measures relating to qualification requirements and procedures, technical standards, and licensing requirements are:

- (a) based on objective and transparent criteria, such as competence and the ability to provide 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 provision of the service.

3. If authorization is required for the provision of a service, the Party, through its competent authorities, shall, within a reasonable period of time after the submission of an application that is considered complete under its domestic law, inform the applicant of the decision concerning the application. At the request of the applicant, the Party, through its competent authorities, shall provide, without undue delay, information concerning the status of the application. This obligation does not apply to authorization requirements that are within the scope of Article 11.7(2).

Article 11.9: 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 shall afford to the other Party, if the other Party is interested, adequate opportunity to negotiate its accession to that agreement or arrangement or to negotiate a comparable agreement or arrangement. If a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that the education, experience, licences or certifications obtained or requirements met in that other Party's territory should be recognized.

3. A Party may not accord recognition in a manner that would constitute a means of discrimination 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 endeavour to ensure that the relevant professional service bodies in their respective territories:
 - (a) exchange information on existing standards and criteria for the authorization, licensing and certification of professional service providers;
 - (b) meet within 18 months to discuss the development of an agreement or arrangement referred to in paragraph 1; and
 - (c) notify the Commission following the conclusion of an agreement or arrangement.

5. The professional service sectors to which paragraph 4 applies shall be determined by the Parties within 1 year following the entry into force of this Agreement.

6. On receipt of a notification referred to in subparagraph 4(c), the Commission shall review the agreement or arrangement within a reasonable time to determine whether it is consistent with this Agreement. Based on the Commission's review, each Party shall ensure that its competent authorities, if appropriate, implement the agreement or arrangement within a mutually agreed time.

7. If 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, Article 11.4 does not require the Party to accord that recognition to the education or experience obtained, requirements met, or licenses or certifications granted in the territory of the other Party.

Article 11.10: Denial of Benefits

1. A Party may deny the benefits of this Chapter to a service provider of the other Party if the Party establishes that the service is provided by an enterprise owned or controlled by nationals 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.

2. Subject to prior notification and consultation in accordance with Articles 20.4 (Transparency – Notification and Provision of Information) and 21.8 (Institutional Arrangements and Dispute Settlement Procedures and Dispute Settlement – Consultations), a Party may deny the benefits of this Chapter to a service provider of the other Party if the Party establishes that the service provided by an enterprise that is owned or controlled by persons of a non-Party and that has no substantial business activities in the territory of the other Party.

Article 11.11: Temporary Licensing

1. If the Parties so decide, each Party shall encourage the relevant professional bodies in its territory to develop procedures for the temporary licensing of professional services providers of the other Party.

2. The Parties shall consider establishing a work program to provide for the temporary licensing, in their respective territories, of nationals of the other Party for a specific professional services sector. To this end, each Party shall coordinate with the relevant professional bodies of its territory, as appropriate.

3. The Commission shall review the implementation of this provision at least once every two years.