

Chapter 11

Cross-Border Trade In Services

Article 11.01 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 or local governments and authorities; and
- (b) non-governmental bodies in the exercise of powers delegated by central or local governments or authorities.

3. Articles 11.05, 11.08 and 11.09 also apply to measures by a Party affecting the supply of a service in its territory by an investor of the other Party as defined in Article 10.28 (Definitions) or a covered investment.¹

4. This Chapter does not apply to:

- (a) financial services, as defined in Article 12.21 (Definitions), 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:

¹ The Parties understand that nothing in this Chapter, including this paragraph, is subject to investor-state dispute settlement pursuant to Section B of the Chapter 10 (Investment).

- (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service; and
- (ii) specialty air services;
- (c) government procurement; 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. A “**service supplied in the exercise of governmental authority**” means any service that is supplied neither on a commercial basis, nor in competition with one or more service suppliers.

Article 11.02 National Treatment

A 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 11.03 Most-Favored-Nation Treatment

A 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 11.04 Standard of Treatment

A Party shall accord to cross-border services and service providers of the other Party the better of the treatment required by Articles 11.02 and 11.03.

Article 11.05 Market Access

No Party may adopt or maintain in its 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 form of numerical quotas or the requirement of an economic needs test;
 - (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;² 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 11.06 Local Presence

No 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 11.07 Non-conforming Measures

1. Articles 11.02, 11.03, 11.05, and 11.06 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; 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 11.02, 11.03, 11.05, and 11.06.

² This clause does not cover measures of a Party that limit inputs for the supply of services.

2. Articles 11.02, 11.03, 11.05 and, 11.06 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.

Article 11.08 Transparency in Developing and Applying Regulations³

Further to Chapter 20 (Transparency):

- (a) each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding its regulations relating to the subject matter of this Chapter;
- (b) at the time it adopts final regulations relating to the subject matter of this Chapter, each Party shall, to the extent possible, including on request, address in writing substantive comments received from interested persons with respect to the proposed regulations; and
- (c) to the extent possible, each Party shall allow a reasonable time between publication of final regulations and their effective date.

Article 11.09 Domestic Regulation

1. Where a Party requires authorization 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. At the 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 authorization requirements that are within the scope of Article 11.07.2.

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 any such measures that it adopts or maintains 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 For greater certainty, "regulations" includes regulations establishing or applying to licensing authorization or criteria.

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 for each Party, this Article shall be amended, as appropriate, after consultations between the Parties, to bring those results into effect under this Agreement. The Parties will coordinate on such negotiations as appropriate.

Article 11.10 Mutual Recognition

1. For the purposes of the fulfilment, 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 a non-Party. 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 the other Party or a non-Party, nothing in Article 11.03 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 any 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 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, experience, licenses, or certifications obtained or requirements met in that other Party's territory should be recognized.

4. No Party may 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 suppliers, or a disguised restriction on trade in services.

5. Annex 11.10 (Professional Services) applies 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 11.11 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 at the time of transfer.

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 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; or
- (e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

Article 11.12 Implementation

The Parties shall consult annually, or as otherwise agreed, to review the implementation of this Chapter and consider other issues of mutual interest.

Article 11.13 Denial of Benefits

Subject to prior notification and consultation in accordance with Articles 20.03 (Notification and Provision of Information) and 22.05 (Consultations), a Party may deny the benefits of this Chapter to a service provider of the other Party where the Party decides, according to its effective law that the service is being provided by an enterprise that is owned or controlled by persons of a non-Party having no substantial business activities in the territory of the other Party.

Article 11.14 Procedures

The Parties shall establish procedures for:

- (a) a Party to notify and include in its relevant Schedule
 - (i) amendments of measure referred to in Article 11.07. (1) and (2); and
 - (ii) quantitative restrictions in accordance with Article 11.05;
- (b) consultations on reservations or quantitative restrictions for further liberalization, if any.

Article 11.15 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
- (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 as defined in Article 10.28 (Definitions) or a covered investment;

enterprise means an “enterprise” as defined in Article 2.01 (Definitions), and a branch of an enterprise;

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

government procurement means the process by which a government obtains the use of or acquires goods or services, or any combination thereof, for governmental purposes and not with a view to commercial sale or resale or with a view to use in the production or supply of goods or services for commercial sale or resale;

professional services means services, the provision of which requires specialized postsecondary 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 tradespersons or vessel and aircraft crew members;

service supplier of a Party means a person of a Party that seeks to supply or supplies a service;⁴ and

specialty air services means any non-transportation air services, such as aerial firefighting, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, and helicopter-lift for logging and construction, and other airborne agricultural, industrial, and inspection services.

⁴ The Parties understand that for purposes of Articles 11.02 and 11.03, “service suppliers” has the same meaning as “services and service suppliers” in the GATS.

Annex 11.10

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 suppliers 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, 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 residency requirements, including 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 Commission shall review the recommendation within a reasonable time to determine whether it is consistent with this Agreement. Based on the Commission'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 suppliers of the other Party.

Review

5. The Commission shall review the implementation of this Annex at least once every three years.