

## CHAPTER 9

### CROSS-BORDER TRADE IN SERVICES

#### Article 9.1: Definitions

For the purposes of this Chapter:

**airport operation services** means the supply of air terminal, airfield and other airport infrastructure operation services on a fee or contract basis. Airport operation services do not include air navigation services;

**computer reservation system (CRS) 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 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, as defined in Article 8.1 (Definitions);

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

**ground handling services** means the supply at an airport, on a fee or contract basis, of the following services: airline representation, administration and supervision; passenger handling; baggage handling; ramp services; catering, except the preparation of the food; air cargo and mail handling; fuelling of an aircraft; aircraft servicing and cleaning; surface transport; and flight operations, crew administration and flight planning. Ground handling services do not include: self-handling; security; line maintenance; aircraft repair and maintenance; or management or operation of essential centralised airport infrastructure, such as de-icing facilities, fuel distribution systems, baggage handling systems and fixed intra-airport transport systems;

**measures adopted or maintained by a Party** means measures adopted or maintained by:

- (a) central, regional, or local governments or authorities; or

- (b) non-governmental bodies in the exercise of powers delegated by central, regional, or local governments or authorities;

**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. These activities do not include the pricing of air transport services or the applicable conditions;

**service supplied in the exercise of governmental authority** means for each Party, any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers;

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

**specialty air services** means any specialised commercial operation using an aircraft whose primary purpose is not the transportation of goods or passengers, such as aerial fire-fighting, flight training, spraying, sightseeing, surveying, mapping, photography, parachute jumping, glider towing, helicopter-lift for logging and construction, and other airborne agricultural, industrial, and inspection services.

## **Article 9.2: Scope**

1. This Chapter shall apply to measures adopted or maintained by a Party affecting cross-border trade in services supplied 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 telecommunication networks, and services in connection with the supply of a service;
- (d) the presence in the Party's 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. This Chapter shall not apply to:

- (a) financial services, as defined in paragraph 5(a) of the *Annex on Financial Services* of GATS;

- (b) air services, including domestic and international air transportation services, whether scheduled or non-scheduled, or to related services in support of air services, other than:
  - (i) aircraft repair and maintenance services while an aircraft is withdrawn from service, excluding so-called line maintenance;
  - (ii) specialty air services;
  - (iii) the selling and marketing of air transport services;
  - (iv) computer reservation system (CRS) services;
  - (v) airport operation services, and
  - (vi) ground handling services.
- (c) government procurement;
- (d) subsidies or grants provided by a Party including government-supported loans, guarantees and insurance, and
- (e) services supplied in the exercise of governmental authority.

3. In the event of any inconsistency between this Chapter and a bilateral, plurilateral or multilateral air services agreement to which the Parties are party, the air services agreement shall prevail in determining the rights and obligations of the Parties that are party to that air services agreement.

4. If the Parties have the same obligations under this Agreement and a bilateral, plurilateral or multilateral air services agreement, the Parties may invoke the dispute settlement procedures of this Agreement only after any dispute settlement procedures in the other agreement have been exhausted.

5. In addition to paragraph 1, Articles 9.6, 9.8 and 9.9 shall also apply to measures adopted or maintained by a Party affecting the supply of a service in its territory by a covered investment.<sup>1</sup>

6. 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 who is employed on a permanent basis in its territory, and does not confer any right on that national with respect to that access or employment.

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<sup>1</sup> For greater certainty, nothing in this Chapter, including Annex 9-A, is subject to investor-State dispute settlement, pursuant to Section B of Chapter 8 (Investment).

7. If the *Annex on Air Transport Services* of GATS is amended, the Parties shall jointly review any new definitions with a view to aligning the definitions in this Agreement with those definitions, as appropriate.

### **Article 9.3: National Treatment**

1. Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords, in like circumstances, to its own services and service suppliers.

2. For greater certainty, 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.

3. For greater certainty, whether treatment referred to in paragraph 1 is accorded in “like circumstances” depends on the totality of the circumstances, including whether the relevant treatment distinguishes between services or service suppliers on the basis of legitimate public welfare objectives.

### **Article 9.4: Most-Favoured-Nation Treatment**

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

2. For greater certainty, whether treatment referred to in paragraph 1 is accorded in “like circumstances” depends on the totality of the circumstances, including whether the relevant treatment distinguishes between services or services suppliers on the basis of legitimate public welfare objectives.

### **Article 9.5: Local Presence**

No Party shall require a service supplier of the other Party to establish or maintain a representative office or any other form of enterprise, or to be resident, in its territory as a condition for the cross-border supply of a service.

### **Article 9.6: Market Access**

No 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;<sup>2</sup> 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 9.7: Non-Conforming Measures**

1. Articles 9.3, 9.4, 9.5 and 9.6 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;
- (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 9.3, 9.4, 9.5 and 9.6.

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<sup>2</sup> Subparagraph (a)(iii) does not cover measures of a Party which limit inputs for the supply of services.

2. Articles 9.3, 9.4, 9.5 and 9.6 shall not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors or activities, as set out by that Party in its Schedule to Annex II.

### **Article 9.8: Transparency**

1. Each Party shall establish or maintain appropriate mechanisms for responding to inquiries from interested persons regarding its regulations that relate to the subject matter of this Chapter.<sup>3</sup>

2. Prior to adopting final regulations relating to the subject matter of this Chapter, each Party shall, to the extent possible consider comments received from interested persons with respect to the proposed regulations.

3. To the extent possible, each Party shall allow a reasonable time between the publication of final regulations and the date when they enter into effect.

### **Article 9.9: Domestic Regulation**

1. Each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

2. If a Party requires authorisation for the supply of a service, it shall ensure that its competent authorities:

- (a) to the extent practicable, permit an applicant to submit an application at any time and shall endeavour to accept applications electronically;
- (b) if a specific time period for application exists, allow a reasonable period of time for the submission of an application;
- (c) in the case of an incomplete application, at the request of the applicant, and to the extent practicable, provide guidance on the additional information required to complete the application and provide the applicant with the opportunity to rectify minor errors and omissions within the application;
- (d) inform the applicant of the decision concerning the application within a reasonable period of time after the submission of an application considered complete under its laws and regulations;

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<sup>3</sup> The implementation of the obligation of establishing appropriate mechanisms may need to take into account the budgetary and resource constraints of small administrative bodies.

- (e) to the extent practicable, establish an indicative timeframe for the processing of an application;
- (f) on request of the applicant provide, without undue delay, information concerning the status of the application;
- (g) if an application is rejected, to the extent practicable, inform the applicant of the reasons for the rejection, either directly or on request, as appropriate; and
- (h) if they deem appropriate, accept copies of documents that are authenticated in accordance with the Party's laws and regulations in place of original documents.

3. 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, while recognising the right to regulate and to introduce new regulations on the supply of services in order to meet its policy objectives, each Party shall endeavour to ensure that any such measures that it adopts or maintains:

- (a) are 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;
- (c) in the case of licensing procedures, are not in themselves a restriction on the supply of the service, and
- (d) to the extent practicable, avoid requiring an applicant to approach more than one competent authority for each application for authorisation.<sup>4</sup>

4. If a Party maintains measures relating to licensing requirements and procedures, qualification requirements and procedures and technical standards, the Party shall ensure that the competent authority reaches and administers its decisions in an independent manner.<sup>5</sup>

5. In determining whether a Party is in conformity with its obligations under paragraph 3, international standards of relevant international organisations applied by that Party shall be taken into account.<sup>6</sup>

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<sup>4</sup> For greater certainty, a Party may require multiple applications for authorisation where a service is in the jurisdiction of multiple competent authorities.

<sup>5</sup> For greater certainty, the Party shall ensure that decisions are taken or implemented in an independent manner, and not for the purposes of favouring a specific service supplier.

<sup>6</sup> "Relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of at least all Parties to the Agreement.

6. Each Party shall ensure that any authorisation fee charged by any of its competent authorities is reasonable, transparent, and does not, in itself, restrict the supply of the relevant service.<sup>7</sup>

7. If licensing or qualification requirements include the completion of an examination, each Party shall ensure that:

- (a) the examination is scheduled at reasonable intervals; and
- (b) a reasonable period of time is provided to enable interested persons to submit an application to take the examination.

8. Each Party shall ensure that there are procedures in place domestically to assess the competency of professionals of the other Party.

9. Each Party shall, to the extent practicable, make publicly available information concerning the requirements and procedures for issuing licences and qualifications. Such information should include, where it exists, the following:

- (a) whether it is necessary to renew the licence or the qualifications for the supply of a service;
- (b) the contact details of the competent authority;
- (c) the requirements, procedures and fees applicable to the issuing of licences and qualifications, and
- (d) the procedures for appeals or reviews of decisions concerning applications, where applicable.

10. If the results of the negotiations related to paragraph 4 of Article VI of the GATS or the results of any similar negotiations undertaken in other multilateral fora in which the Parties participate, enter into effect, the Parties shall jointly review these results, with a view to determining whether such results should be incorporated into this Agreement.

11. This Article shall not apply to the non-conforming aspects of measures that are not subject to the obligations under Article 9.3 or Article 9.6 by reason of an entry in a Party's Schedule to Annex I, or to measures that are not subject to the obligations under Article 9.3 or Article 9.6 by reason of an entry in a Party's Schedule to Annex II.

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<sup>7</sup> For the purposes of this paragraph, authorisation fees do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.



### **Article 9.10: Recognition**

1. For the purposes of the fulfilment, in whole or in part, of a Party's standards or criteria for the authorisation, licensing, or certification of service suppliers, and subject to the requirements of paragraph 4, a Party may recognise the education or experience obtained, requirements met, or licences or certifications granted, in the territory of the other Party or a non-Party. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the other Party or non-Party concerned, or may be accorded autonomously.
2. If 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 9.4 shall be construed to require the Party to accord recognition to the education or experience obtained, requirements met or licences or certifications granted in the territory of the other Party.
3. A Party that is party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity to the other Party, on request, 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 to the other Party to demonstrate that education, experience, licences or certifications obtained or requirements met in that other Party's territory should be recognised.
4. No Party shall accord recognition in a manner that would constitute a means of discrimination between Parties or between Parties and non-Parties in the application of its standards or criteria for the authorisation, certification or licensing of service suppliers, or a disguised restriction on trade in services.
5. As set out in Annex 9-A, the Parties shall endeavour to facilitate trade in professional services.

### **Article 9.11: Transfers and Payments<sup>8</sup>**

1. Each Party shall permit all transfers and payments that relate 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 transfers and payments that relate to the cross-border supply of services to be made in a freely usable currency at the market rate of exchange that prevails at the time 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:

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<sup>8</sup> For greater certainty, this Article is subject to Annex 8-B (Transfers)

- (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.

For greater certainty, this Article does not preclude the equitable, non-discriminatory, and good faith application of a Party's laws relating to its social security, public retirement, or compulsory savings programs.

#### **Article 9.12: Administration of this Chapter**

Matters relating to administration of this Chapter shall be considered by the Parties through the Services, Investment and E-Commerce Committee established under Article 22.5(b) (Establishment of Cross-Cutting Committees).

#### **Article 9.13: 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 or by persons of the denying Party that has no substantial business activities in the territory of the other Party.
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, and the denying Party adopts or maintains measures with respect to the non-Party 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.

## **ANNEX 9-A**

### **PROFESSIONAL SERVICE**

Within 1 year after the entry into force of this Agreement, the Parties shall initiate dialogue to:

1. identify professional services of mutual interest among the Parties;
2. discuss issues that relate to the recognition of professional qualifications, licensing or registration; and
3. encourage its relevant bodies to establish dialogues with the relevant bodies of the other Party, with a view to facilitate trade in professional services.