

CHAPTER NINE

CROSS-BORDER TRADE IN SERVICES

Article 901: 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, including 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 provision of a service.

2. This Chapter does not apply to:

- (a) financial services as defined in Chapter Eleven (Financial Services);

(b) air services¹ 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, and

(iii) computer reservation system (“CRS”) services;

(c) procurement by a Party or a state enterprise; and

(d) subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance.

3. 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.

Article 902: Subsidies

The Parties note their mutual obligations related to subsidies in Article XV of the GATS and affirm their commitment respecting the development of any necessary disciplines pursuant to Article XV. To the extent that any such disciplines are adopted by the WTO Members, the Parties shall, as appropriate, review them jointly with a view to determining whether this Article should be supplemented.

¹ For greater certainty, the term “air services” includes but is not limited to traffic rights.

Article 903: 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 accorded by a Party under paragraph 1 means, with respect to measures 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 suppliers of the Party of which it forms a part.

Article 904: 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 905: Standard of Treatment

Each Party shall accord to service suppliers of the other Party the better of the treatment required by Articles 903 and 904.

Article 906: Market Access

Neither Party may adopt or maintain 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,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.

² Subparagraph (a)(iii) of this Article does not cover measures of a Party that limit inputs for the supply of services.

Article 907: 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 provision of a service.

Article 908: Non-Conforming Measures

1. Articles 903, 904, 906 and 907 do not apply to:
 - (a) any existing non-conforming measure that is maintained by a Party at:
 - (i) the national level of government, as set out by that Party in its Schedule to Annex I,
 - (ii) a sub-national³ 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 903, 904, 906 and 907.

³ For purposes of this Article, sub-national level of government does not include local level of government.

2. Articles 903, 904, 906 and 907 do not apply to measures that a Party adopts or maintains with respect to sectors, sub-sectors or activities, as set out in its Schedule to Annex II.

Article 909: Domestic Regulation⁴

1. The Parties note their mutual obligations related to domestic regulation in Article VI:4 of the GATS and affirm their commitment respecting the development of any necessary disciplines pursuant to Article VI:4. To the extent that any such disciplines are adopted by the WTO Members, the Parties shall, as appropriate, review them jointly with a view to determining whether this Article should be supplemented.

2. Pending the incorporation of disciplines pursuant to 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 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.

⁴ Nothing in paragraph 2 may be the subject of dispute settlement procedures in Chapter Twenty-One (Dispute Settlement).

3. Where authorisation is required for the supply of a service, the competent authorities of that Party will, within a reasonable period of time after the submission of an application that is 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.

Article 910: Recognition⁵

1. For the purposes of 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. Such 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, whether existing or future, shall afford, if the other Party is interested, adequate opportunity for the other Party to negotiate accession to such an agreement or arrangement or to negotiate a comparable agreement or arrangement. Where 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.

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

4. The Parties shall endeavour to ensure that the relevant professional bodies in their respective territories of professional service sectors to be determined by the Working Group within six months following entry into force of this Agreement:

- (a) exchange information on existing standards and criteria for the authorization, licensing and certification of professional service providers;
- (b) meet within 12 months to discuss the development of an agreement or arrangement referred to in paragraph 1;
- (c) be guided by Annex 910.4 for the negotiations of such agreement or arrangement; and
- (d) provide notification following the conclusion of an agreement or arrangement to the Commission.

5. On receipt of a notification referred to in subparagraph 4(d), 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 respective competent authorities, where appropriate, implement the agreement within a mutually agreed time.

Article 911: Temporary Licensing

1. Where the Parties agree, each Party shall encourage the relevant bodies in its territory to develop procedures for the temporary licensing of professional services suppliers of the other Party.
2. Each Party shall consider establishing a work program to provide for the temporary licensing in its territory of nationals of the other Party who are licensed as engineers in the territory of the other Party. To this end, each Party shall coordinate with the relevant professional bodies of its territory as appropriate.
3. To this end, the Working Group shall consult with the relevant professional bodies to obtain their recommendations on:
 - (a) the development of procedures for the temporary licensing of engineers to permit them to practice as engineers in each jurisdiction in each of the Parties' territory;
 - (b) the development of model procedures for adoption by the competent authorities throughout each of the Parties' territory to facilitate the temporary licensing of engineers;
 - (c) the engineering specialties to which priority should be given in developing temporary licensing procedures; and
 - (d) other matters relating to the temporary licensing of engineers identified by the Working Group.

4. The Working Group shall request that the relevant professional bodies make recommendations on the matters referred to in paragraph 3 within 18 months of the date of their first meeting.

5. The Working Group shall encourage the relevant professional bodies of each Party to meet at the earliest opportunity with a view to cooperating in the development of joint recommendations, within two years following the entry into force of this Agreement, on the matters referred to in paragraph 3. The Working Group shall request an annual report from the relevant professional bodies on the progress achieved in developing recommendations.

6. The Working Group shall promptly review a recommendation made pursuant to paragraphs 4 or 5 to ensure its consistency with this Agreement. If the recommendation is consistent with this Agreement, the Working Group shall encourage the competent authorities of each Party to implement the recommendation within one year.

Article 912: 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 offences; or
- (e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

Article 913: Denial of Benefits

Subject to prior notification in accordance with Article 1902 (Transparency - Notification and Provision of Information) and consultations⁶, a Party may deny the benefits of this Chapter to a service supplier of the other Party:

- (a) where the Party establishes that the service is being provided by an enterprise owned or controlled by nationals of a non-Party, and the denying Party adopts or maintains measures with respect to 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;
- (b) if the service supplier is an enterprise owned or controlled by persons of a non-Party and the enterprise has no substantial business activities in the territory of the other Party; or

⁶ For purposes of this Article, “consultation” does not mean “consultations” pursuant to Article 2104 (Dispute Settlement – Consultations).

- (c) if the service supplier is an enterprise owned or controlled by persons of the denying Party and the enterprise has no substantial business activities in the territory of the other Party.

Article 914: Working Group

1. The Parties shall establish a Working Group at the entry into force of this Agreement comprising representatives of each Party. The representatives of each Party shall be:

For Canada: Director
 Services Trade Policy Division
 Department of Foreign Affairs and International Trade

For Peru: Vice Minister of Foreign Trade
 Ministry of Foreign Trade and Tourism

or any successors.

2. The Working Group's functions shall include:

- (a) meeting annually, or as otherwise agreed by the representatives, to review matters concerning the implementation and operation of this Chapter and consider issues of interest to the Parties affecting cross-border trade in services;
- (b) coordinating enquiries from one Party to the other for information regarding measures that pertain to or may affect cross-border trade in services;⁷

⁷ With respect to Peru, the ability of small administrative agencies to respond to enquiries may depend on resources and budget constraints.

- (c) considering the development of procedures to increase the transparency of measures described in Article 908;
- (d) reviewing the professional service sectors referred to in paragraph 4 of Article 910; and
- (e) monitoring the work and developments of the relevant professional bodies in each Party regarding mutual recognition agreements on authorization, licensing and certification of professional service providers, and providing reports annually or as otherwise agreed to the Commission on initiatives and progress undertaken by the Parties with respect to the implementation of Article 910.

Article 915: Definitions

For purposes of this Chapter:

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

computer reservation system (“CRS”) services mean 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 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 a covered investment, as defined in Article 847 (Investment – Definitions);

enterprise means an enterprise as defined in Chapter One (Initial Provisions and General Definitions), 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 activities there;

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

- (a) national or sub-national governments and authorities; and
- (b) non-governmental bodies in the exercise of any regulatory, administrative or other governmental authority delegated by national or sub-national governments and authorities;

professional services means services, the supply 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 services supplied by trades-persons or vessel and aircraft crew members;

selling and marketing of air transport services mean 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 nor the applicable conditions; and

service supplier of a Party means a person of that Party that seeks to supply or supplies a service⁸.

⁸ For purposes of Articles 903, 904 and 905, the treatment that a Party is required to accord to a service provider of the other Party pursuant to these Articles shall extend to the relevant service(s) provided by that service provider. For purposes of Articles 903, 904 and 906 “services suppliers” has the same meaning as “services and service suppliers” as used in Articles XVII, II and XVI of the GATS, respectively.

Annex 910.4

Guidelines for Mutual Recognition Agreements or Arrangements (“MRAs”) for the Professional Services Sector

Introduction

This Annex provides practical guidance for governments, negotiating entities or other entities entering into mutual recognition negotiations for the professional services sector. The guidelines contained in it are non-binding but a Party shall consider them when negotiating MRAs. They do not modify or affect the rights and obligations of the Parties under this Agreement.

The objective of these guidelines is to make it easier for each Party to negotiate MRAs.

The examples listed under the various sections of these guidelines are provided by way of illustration. The listing of these examples is indicative and is intended neither to be exhaustive nor as an endorsement of the application of such measures by a Party.

A. Conduct of Negotiations and Relevant Obligations under this Agreement

With reference to the obligations under Article 910, this section sets out elements considered useful in the discharge of these obligations.

1. Opening of Negotiations

The information supplied by a Party to the Commission should include the following:

- (a) the intent to enter into negotiations;
- (b) the entities involved in discussions (e.g. governments, national organisations in the professional services sector or institutes which have authority - statutory or otherwise - to enter into such negotiations);
- (c) a contact point to obtain further information;
- (d) the subject of negotiations (specific activities covered); and
- (e) the expected time of the start of negotiations and an indicative date for the expression of interest by governments or entities.

2. Results

On the conclusion of an MRA by a Party, the information it should supply to the Commission should include:

- (a) the content of the agreement (if it is a new agreement); or
- (b) significant modifications to the agreement (if an agreement already exists).

3. Follow-Up Actions

Follow-up actions by the Parties supplying information under paragraph 1 should include ensuring that:

- (a) the conduct of negotiations and the agreement itself comply with the provisions of this Chapter, in particular Article 910; and
- (b) they adopt any measures and undertake any actions required to ensure the implementation and monitoring of the agreement in accordance with paragraph 5 of Article 910.

4. Single negotiating entity

Where no single negotiating entity exists, the Party is encouraged to establish one.

B. Form and Content of Agreement/Arrangement

This section sets out various issues that may be addressed in any negotiations and, if so agreed, included in the final agreement. It outlines some basic ideas on what a Party might require of foreign professionals seeking to take advantage of an MRA.

1. Participants

The MRA should identify clearly:

- (a) the parties to the agreement (e.g. governments, national professional associations or institutes);
- (b) competent authorities or organisations other than the parties to the agreement, if any, and their position in relation to the agreement; and
- (c) the status and area of competence of each party to the agreement.

2. Purpose of agreement

The purpose of the MRA should be clearly stated.

3. Scope of agreement

The MRA should set out clearly:

- (a) the scope of the agreement in terms of the specific profession or titles and professional activities it covers in the territories of the parties;
- (b) who is entitled to use the professional titles concerned;

- (c) whether the recognition mechanism is based on qualifications, or on the licence obtained in the country of origin, or some other requirement; and
- (d) whether the agreement covers temporary and/or permanent access to the profession concerned.

4. Mutual recognition provisions

The MRA should clearly specify the conditions to be met for recognition in the territories of each party and the level of equivalence agreed between the parties. The precise terms of the agreement will depend on the basis on which the MRA is founded, as discussed above. In case the requirements of the various sub-national jurisdictions of a party to an MRA are not identical, the difference should be clearly presented. The agreement should address the applicability of the recognition granted by one sub-national jurisdiction in the other sub-national jurisdictions of the party.

(a) Eligibility for recognition

(i) Qualifications

If the MRA is based on recognition of qualifications, then it should, where applicable, state:

- the minimum level of education required (e.g. entry requirements, length of study, subjects studied),
- the minimum level of experience required (e.g. location, length and conditions of practical training or supervised professional practice prior to licensing, framework of ethical and disciplinary standards),

- examinations passed (especially examinations of professional competence),
- the extent to which home country qualifications are recognised in the host country, and
- the qualifications which the parties are prepared to recognise, for instance, by listing particular diplomas or certificates issued by certain institutions, or by reference to particular minimum requirements to be certified by the authorities of the country of origin, including whether the possession of a certain level of qualification would allow recognition for some activities but not others.

(ii) Registration

If the MRA is based on recognition of the licensing or registration decision made by regulators in the country of origin, it should specify the mechanism by which eligibility for such recognition may be established.

- (b) Additional requirements for recognition in the host country
 - (i) Where it is considered necessary to provide for additional requirements, in order to ensure the quality of the service, the MRA should set out the conditions under which those requirements may apply, e.g. in case of shortcomings in relation to qualification requirements in the host country or knowledge of local law, practice, standards and regulations. This knowledge should be essential for practice in the host jurisdiction or required because there are differences in the scope of licensed practice, and
 - (ii) Where additional requirements are deemed necessary, the MRA should set out in detail what they entail (e.g., examination, and aptitude test, additional practice in the host country or in the country of origin, practical training, and language used for examination).

5. Mechanisms for implementation

The MRA should state:

- (a) the rules and procedures to be used to monitor and enforce the provisions of the agreement;
- (b) the mechanisms for dialogue and administrative co-operation between the parties; and
- (c) the means of arbitration for disputes under the MRA.

As a guide to the treatment of individual applicants, the MRA should include details on:

- (a) the focal point of contact in each party for information on all issues relevant to the application (e.g. name and address of relevant authorities, licensing formalities, information on additional requirements which need to be met in the host country);
- (b) the length of procedures for the processing of applications by the relevant authorities of the host country;
- (c) the documentation required of applicants and the form in which it should be presented and any time limits for applications;
- (d) acceptance of documents and certificates issued in the country of origin in relation to qualifications and licensing;
- (e) the procedures of appeal to or review by the relevant authorities; and
- (f) any fees that might be reasonably required.

The MRA should also include the following commitments:

- (a) that requests about the measures will be promptly dealt with;
- (b) that adequate preparation time will be provided where necessary;
- (c) that any exams or tests will be arranged with reasonable frequency;

- (d) that fees to applicants seeking to take advantage of the terms of the MRA will be in proportion to the cost to the host country or organisation; and
- (e) to supply information on any assistance programmes in the host country for practical training, and any commitments of the host country in that context.

6. Licensing and other provisions in the host country

Where applicable:

- (a) the MRA should also set out the means by which, and the conditions under which, a licence is actually obtained following the establishment of eligibility, and what this licence entails (e.g. a licence and its content, membership of a professional body, use of professional and/or academic titles). Any licensing requirements other than qualifications should be explained, and should include such information as:
 - (i) an office address, an establishment requirement or a residency requirement,
 - (ii) a language requirement,
 - (iii) proof of good conduct and financial standing,
 - (iv) professional indemnity insurance,
 - (v) compliance with host country's requirements for use of trade/firm names, and

- (vi) compliance with host country ethics (e.g. independence and inappropriate behavior);
- (b) in order to ensure the transparency of the system, the MRA should include the following details for each party:
 - (i) the relevant laws and regulations to be applied (e.g. disciplinary action, financial responsibility, liability),
 - (ii) the principles of discipline and enforcement of professional standards, including disciplinary jurisdiction and any consequential limitations on the professionals,
 - (iii) the means for ongoing verification of competence,
 - (iv) the criteria for and procedures relating to revocation of the registration of professionals, and
 - (v) regulations relating to any nationality and residency requirements needed for the purposes of the MRA.

7. Revision of the agreement

If the MRA includes terms under which it can be reviewed or revoked, the details should be clearly stated.