

## CHAPTER 11 : CROSS-BORDER TRADE IN SERVICES

### ARTICLE 11.1 : DEFINITIONS

For the purposes of this Chapter:

1. **cross-border supply of services** or **cross-border trade in 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 an investor of the other Party or an investment of an investor of the other Party;

2. **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 substantive business activities there;

3. **professional services** means services, the supply of which requires specialized<sup>11-1</sup> 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; and

4. **service supplier of a Party** means a person of that Party that seeks to supply or supplies a service<sup>11-2</sup>.

### ARTICLE 11.2 : SCOPE -AND COVERAGE

- 1. (a) This Chapter applies to measures adopted or maintained by a Party affecting cross-border trade in services by service suppliers of the other Party.

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<sup>11-1</sup> For greater certainty, the term “specialized post-secondary education” includes education beyond the high-school level that is related to a specific area of knowledge.

<sup>11-2</sup> The Parties understand that for purposes of Articles 11.3 (National Treatment), 11.4 (Most-Favoured-Nation Treatment), and 11.5 (Market Access), **service suppliers** has the same meaning as “services and service suppliers” as used in GATS Articles II , XVI, and XVII.

(b) Measures covered by sub-paragraph (a) include measures affecting:

- (i) the production, distribution, marketing, sale and delivery of a service;
- (ii) the purchase or use of, or payment for, a service;
- (iii) the access to and use of distribution, transport, or telecommunications networks and services in connection with the supply of a service;
- (iv) the presence in its territory of a service supplier of the other Party; and
- (v) the provision of a bond or other form of financial security as a condition for the supply of a service.

(c) For purposes of this Chapter, **measures adopted or maintained by a Party** means measures adopted or maintained by:

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

2. Articles 11.5 (Market Access), Article 11.8 (Domestic Regulation) and Article 11.13 (Transparency) also apply to measures by a Party affecting the supply of a service in its territory by an investor of the other Party or an investment of an investor of the other Party<sup>11-3</sup>.

3. This Chapter does not apply to:

- (a) government procurement as defined in Article 9.3 (Scope and Coverage);
- (b) air services<sup>11-4</sup>, including domestic and international air transportation services, whether scheduled or non-scheduled, and related services in support of air services, other than:

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<sup>11-3</sup> The Parties understand that nothing in this Chapter, including this paragraph, is subject to investor-state settlement pursuant to Article 10.17 (Investor-State Dispute Settlement) of Chapter 10 (Investment).

<sup>11-4</sup> For greater certainty, the term “air services” includes traffic rights.

- (i) aircraft repair and maintenance services;
  - (ii) the selling and marketing of air transport services; and
  - (iii) computer reservation system (“CRS”) services; or
- (c) subsidies<sup>11-5</sup> or grants provided by a Party or public enterprises, including government-supported loans, guarantees, and insurances.

If the results of the negotiations related to Article XV.1 of the GATS (or the results of any similar negotiations undertaken in other multilateral forum in which each of the Parties participate) enter into effect, this Chapter shall be amended, as appropriate, after consultations among the Parties, to bring those results into effect under this Agreement. The Parties shall coordinate on such negotiations, as appropriate.

4. 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.

5. (a) This Chapter does not apply to services supplied in the exercise of governmental authority in a Party’s territory.

(b) For purposes of this Chapter, **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.

6. Nothing in this Chapter shall prevent a Party from applying measures to regulate the entry of nationals of the other Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of nationals of the other Party across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under the terms of this Chapter.<sup>11-6</sup>

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<sup>11-5</sup> For greater certainty, Chapter 16 (Transparency) applies to subsidies or grants provided by a Party or public enterprises, including government-supported loans, guarantees, and insurances.

<sup>11-6</sup> The sole fact of requiring a visa for nationals of the other Party shall not be regarded as nullifying or impairing benefits under a specific commitment.

7. This Chapter does not apply to measures affecting the supply of financial services<sup>11-7</sup> as defined in paragraph 5(a) of the GATS Annex on Financial Services. The obligations of each Party with respect to measures affecting the supply of financial services shall be in accordance with its obligations under GATS, the GATS Annex on Financial Services and the GATS Second Annex on Financial Services, and subject to any reservations thereto. The said obligations are hereby incorporated into this Agreement.

8. In addition to the provisions of this Chapter, the rights and obligations of the Parties in respect of telecommunication services shall also be governed by the provisions of:

- (a) the GATS Annex on Telecommunication Services; and
- (b) the GATS Reference Paper developed in the Negotiating Group on Basic Telecommunications attached to each Party's GATS schedules of commitments

which are hereby incorporated into this Chapter, *mutatis mutandis*, as if those provisions were fully set out herein.

#### ARTICLE 11.3 : NATIONAL TREATMENT

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.

#### ARTICLE 11.4 : 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 11.5 : MARKET ACCESS

1. A Party shall not 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

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<sup>11-7</sup> For greater certainty, "the supply of financial services" shall mean the supply of services as defined in GATS Article I.2.

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>11-8</sup>;
  - (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; and
- (b) restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

#### ARTICLE 11.6 : LOCAL PRESENCE

A Party shall not 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 11.7 : NON-CONFORMING MEASURES

1. Article 11.3 (National Treatment), Article 11.4 (Most-Favoured-Nation Treatment), Article 11.5 (Market Access) and Article 11.6 (Local Presence) 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 11B (Peru's Cross-Border Trade in Services and Investment Reservations for Existing Measures and Liberalisation Commitments) and 11C (Singapore's Cross-Border Trade in Services and Investment

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<sup>11-8</sup> This paragraph does not cover measures of a Party which limit inputs for the supply of services.

Reservations for Existing Measures and Liberalisation Commitments), respectively;

- (ii) a regional level of government, as set out by that Party in its Schedule to Annex 11B (Peru's Cross-Border Trade in Services and Investment Reservations for Existing Measures and Liberalisation Commitments) and 11C (Singapore's Cross-Border Trade in Services and Investment Reservations for Existing Measures and Liberalisation Commitments), respectively; or
  - (iii) a local level of government;
- (b) the continuation or prompt renewal of any non-conforming measure referred to in sub-paragraph (a); or
  - (c) an amendment to any non-conforming measure referred to in sub-paragraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 11.3 (National Treatment), Article 11.4 (Most-Favoured Nation Treatment), Article 11.5 (Market Access), and Article 11.6 (Local Presence).

2. Article 11.3 (National Treatment), Article 11.4 (Most-Favoured Nation Treatment), Article 11.5 (Market Access) and Article 11.6 (Local Presence) 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 11D (Peru's Cross-Border Trade in Services and Investment Reservations for Future Measures) and 11E (Singapore's Cross-Border Trade in Services and Investment Reservations for Future Measures), respectively.

#### ARTICLE 11.8 : DOMESTIC REGULATION

1. Where a Party requires authorization for the supply of a service, the Party's competent authorities shall, within a reasonable period of time after the submission of an application 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. This obligation shall not apply to authorization requirements that are within the scope of paragraph 2 of Article 11.7 (Non-Conforming Measures).

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 GATS (or the results of any similar negotiations undertaken in other multilateral fora in which both Parties participate) enter into effect, this Article shall be amended, as appropriate, after consultations between the Parties, to bring those results into effect under this Agreement. The Parties agree to coordinate on such negotiations, as appropriate.

#### ARTICLE 11.9 : RECOGNITION

1. For the purposes of the 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 licences or certifications granted in a particular country, including the other Party and non-Parties. 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 a non-Party, nothing in Article 11.4 (Most-Favoured-Nation Treatment) 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. 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 the other Party is interested, to negotiate its accession to such an agreement or arrangement or to negotiate comparable ones with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that education, experience, licences or certifications obtained or requirements met in that other Party's territory should be recognized.

4. A Party shall not accord recognition in a manner which 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 11A (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 11.10 : 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.

4. Nothing in this Chapter shall affect the rights and obligations of the Members of the International Monetary Fund under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a Member shall not impose restrictions on any capital transactions inconsistently with its obligations under this Chapter regarding such transactions, except under Article 11.11 (Restrictions to Safeguard the Balance of Payments) or at the request of the Fund.

ARTICLE 11.11 : RESTRICTIONS TO SAFEGUARD THE BALANCE OF PAYMENTS

1. In the event of serious balance of payments and external financial difficulties or threat thereof, a Party may adopt or maintain restrictions on cross-border trade in services, including payments or transfers for transactions of cross-border trade in services. It is recognized that particular pressures on the balance of payments of a Party in the process of economic development may necessitate the use of restrictions to ensure, *inter alia*, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development.

2. The restrictions referred to in paragraph 1 shall:

- (a) be consistent with the Articles of Agreement of the International Monetary Fund;
- (b) avoid unnecessary damage to the commercial, economic and financial interests of the other Party;
- (c) not exceed those necessary to deal with the circumstances described in paragraph 1;
- (d) be temporary and be phased out progressively as the situation specified in paragraph 1 improves;
- (e) be applied on a national treatment basis and such that the other Party is treated no less favourably than any non-Party.

3. Any restrictions adopted or maintained under paragraph 1, or any changes therein, shall be promptly notified to the other Party.

4. The Party adopting any restrictions under paragraph 1 shall commence consultations with the other Party in order to review the restrictions adopted by it.

ARTICLE 11.12 : DENIAL OF BENEFITS

Subject to prior notification and consultation according to the procedures set out in Article 17.4 (Consultations), a Party may deny the benefits of this Chapter to:

- (a) a service supplier of the other Party if the service supplier is an enterprise owned or controlled by persons of a non-Party and such enterprise has no substantive business operations in the territory of the other Party; or

- (b) a service supplier of the other Party if the service supplier is an enterprise owned or controlled by persons of the denying Party and such enterprise has no substantive business operations in the territory of the other Party.

#### ARTICLE 11.13 : TRANSPARENCY

1. Each Party shall publish promptly or otherwise make publicly available international agreements pertaining to or affecting trade in services to which it is a signatory. International agreements pertaining to or affecting trade in services to which either Party is a signatory shall also be published.
2. 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<sup>11-9</sup>.

#### ARTICLE 11.14 : IMPLEMENTATION

The Parties shall consult whenever the Free Trade Commission convenes under Article 16.1 (The Free Trade Commission) of this Agreement, or as otherwise agreed, to review the implementation of this Chapter and consider other matters of mutual interest affecting trade in services. Among other issues, the Parties may consult with a view to determining the feasibility of removing any remaining citizenship or permanent residency requirements for the supply of services in the territory of each Party. Such consultations may also include consideration of the development of procedures that could contribute to greater transparency of measures described in paragraph 1(c) and paragraph 2 of Article 11.7 (Non-Conforming Measures).

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<sup>11-9</sup> The Parties' implementation of their obligations to establish appropriate mechanisms for small administrative agencies may need to take into account resource and budget constraints.