

## Chapter Eleven

### Cross-Border Trade in Services

#### Article 11.1: 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, regional, or local governments and authorities; and
- (b) non-governmental bodies in the exercise of powers delegated by central, regional, or local governments or authorities.

3. Articles 11.4, 11.7, and 11.8 also apply to measures adopted or maintained by a Party affecting the supply of a service in its territory by an investor of the other Party as defined in Article 10.29 (Definitions) or a covered investment.<sup>1</sup>

4. This Chapter does not apply to:

- (a) financial services, as defined in Article 12.20 (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:

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

- (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service, and
- (ii) specialty air services;
- (c) 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.

7. Nothing in this Chapter or any other provision of this Agreement shall be construed to impose any obligation on a Party regarding its immigration measures, including admission or conditions of admission for temporary entry.

#### **Article 11.2: National Treatment**

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

2. The treatment to be accorded by a Party under paragraph 1 means, with respect to a regional level of government, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that regional level of government to service suppliers of the Party of which it forms a part.

#### **Article 11.3: Most-Favored-Nation Treatment**

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

#### **Article 11.4: Market Access**

Neither Party may 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 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,<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 11.5: 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 supply of a service.

#### **Article 11.6: Non-Conforming Measures**

1. Articles 11.2, 11.3, 11.4, and 11.5 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;
    - (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

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

it existed immediately before the amendment, with Articles 11.2, 11.3, 11.4, and 11.5.

2. Articles 11.2, 11.3, 11.4, and 11.5 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 11.7: Transparency in Developing and Applying Regulations<sup>3</sup>**

Further to Chapter Eighteen (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 11.8: 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 11.6.2.

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.

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<sup>3</sup> 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 11.9: Mutual 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 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. 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 11.3 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. 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 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 the other Party's territory should be recognized.

4. Neither 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 11.9 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 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 11.11: Denial of Benefits**

1. A Party may deny the benefits of this Chapter to a service supplier of the other Party if the service is being supplied by an enterprise owned or controlled by persons of a non-Party, and the denying Party:

- (a) does not maintain diplomatic relations with the non-Party; or
- (b) 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.

2. Subject to Articles 18.3 (Notification and Provision of Information) and 20.4 (Consultations), a Party may deny the benefits of this Chapter to a service supplier of the other Party that is an enterprise of the other Party if the enterprise has no substantial business activities in the territory of the other Party, and persons of a non-Party, or of the denying Party, own or control the enterprise.

#### **Article 11.12: Specific Commitments**

1. Express Delivery Services:

- (a) The Parties affirm that measures affecting express delivery services are subject to this Agreement.
- (b) For purposes of this Agreement, **express delivery services** means the collection, transport, and delivery, of documents, printed matter, parcels, goods, or other items on an expedited basis, while tracking and maintaining control of these items throughout the supply of the service. Express delivery services do not include (i)

air transport services, (ii) services supplied in the exercise of governmental authority, or (iii) maritime transport services.<sup>4</sup>

- (c) The Parties express their desire to maintain at least the level of market openness for express delivery services they provided on the date this Agreement is signed.
- (d) Panama may not adopt or maintain any restriction on express delivery services that is not in existence on the date this Agreement is signed. Panama confirms that it does not intend to direct revenues from its postal monopoly to benefit express delivery services. Under title 39 of the United States Code, an independent U.S. government agency determines whether U.S. postal rates meet the requirement that each class of mail or type of mail service bear the direct and indirect postal costs attributable to that class or type plus that portion of all other costs of the U.S. Postal Service reasonably assignable to such class or type.
- (e) Each Party shall ensure that, where its monopoly supplier of postal services competes, either directly or through an affiliated company, in the supply of express delivery services outside the scope of its monopoly rights, such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with the Party's obligations under Article 10.3 (National Treatment), 10.4 (Most-Favored-Nation Treatment), 11.2, 11.3, or 11.4. The Parties also reaffirm their obligations under Article VIII of the GATS.<sup>5</sup>
- (f) Four years after the date of entry into force of this Agreement, Panama shall apply to publicly owned and privately owned suppliers, on a non-discriminatory basis, measures taken pursuant to Articles 8 and 9 of *Decreto Ejecutivo No. 30 de 8 de febrero de 1991 por el cual se dictan medidas relacionadas con la recepción, transporte, despacho y entrega extrapostal internacional de envíos de correspondencia urgente (correo paralelo) y se deroga el Decreto No. 86 del 4 de diciembre de 1989* that impose fees on, or set a minimum price for, the supply of express delivery services.

### **Article 11.13: Additional Provisions**

Annex 10-F (Panama Canal Authority) sets out additional provisions relating to the Panama Canal Authority.

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<sup>4</sup> For greater certainty, for the United States, express delivery services do not include delivery of letters subject to the *Private Express Statutes* (18 U.S.C. § 1693 *et seq.*, 39 U.S.C. § 601 *et seq.*), but do include delivery of letters subject to the exceptions to, or suspensions promulgated under, those statutes, which permit private delivery of extremely urgent letters.

<sup>5</sup> For greater certainty, the Parties reaffirm that nothing in this Article is subject to investor-state dispute settlement pursuant to Section B of Chapter Ten (Investment).

#### **Article 11.14: 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 11.15: 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 10.29 (Definitions) or a covered investment;

**enterprise** means an “enterprise” as defined in Article 2.1 (Definitions of General Application), 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;

**professional services** means services, 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 services provided by trades-persons 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;<sup>6</sup> and

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

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<sup>6</sup> The Parties understand that for purposes of Articles 11.2 and 11.3, “service suppliers” has the same meaning as “services and service suppliers” as used in Articles II and XVII of the GATS.



## **Annex 11.9**

### **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.