

## **CHAPTER TWELVE** **CROSS-BORDER TRADE IN SERVICES**

### **ARTICLE 12.1: 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. Notwithstanding paragraph 1:
  - (a) Articles 12.4, 12.7, and 12.8 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> and
  - (b) Annex 12-B shall apply to measures adopted or maintained by a Party affecting the supply of express delivery services, including by a covered investment.<sup>2</sup>
4. Notwithstanding paragraph 1, this Chapter does not apply to:
  - (a) financial services as defined in Article 13.20 (Definitions), except that paragraph 3 shall apply where the financial service is supplied by a covered investment that is not a covered investment in a financial institution (as defined in Article 13.20) in the Party's territory;
  - (b) government procurement;

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<sup>1</sup> For greater certainty, the scope and coverage of application of Articles 12.4, 12.7, and 12.8 to measures adopted or maintained by a Party affecting the supply of a service in its territory by a covered investment is limited to the scope and coverage specified in Article 12.1 of this Chapter, subject to any applicable non-conforming measures and exceptions.

<sup>2</sup> For greater certainty, nothing in this Chapter, including paragraph 3 and Annex 12-B, is subject to investor-state dispute settlement under Section B (Investor-State Dispute Settlement) of Chapter Eleven (Investment).

- (c) air services, including domestic and international air transportation services, whether scheduled or non-scheduled, and related services in support of air services, other than:
  - (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service; and
  - (ii) specialty air services; 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 in a Party's territory. 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.

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.<sup>3</sup>

#### ARTICLE 12.2: 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 12.3: MOST-FAVORED-NATION TREATMENT<sup>4</sup>

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 12.4: 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:

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<sup>3</sup> For greater certainty, paragraph 7 does not limit the application of this Agreement to measures other than immigration measures that affect the supply of a service by a national of a Party in the territory of the other Party. The Parties shall consult regarding paragraph 7 within two years of the date this Agreement enters into force, and at two-year intervals afterward, unless the Parties otherwise agree.

<sup>4</sup> For greater certainty, nothing in Article 12.3 shall be interpreted as extending the scope and coverage of this Chapter.

- (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>5</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 12.5: 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 12.6: NON-CONFORMING MEASURES

1. Articles 12.2 through 12.5 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;<sup>6</sup>
  - (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 Article 12.2, 12.3, 12.4, or 12.5.

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<sup>5</sup> Clause (iii) does not cover measures of a Party that limit inputs for the supply of services.

<sup>6</sup> For Korea, **local level of government** means a local government as defined in the *Local Autonomy Act*.

2. Articles 12.2 through 12.5 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 12.7: 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 a Party adopts or maintains with respect to sectors, sub-sectors, or activities as set out in its Schedule to Annex II.

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, while recognizing the right to regulate and to introduce new regulations on the supply of services in order to meet national policy objectives, each Party shall endeavor 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; and
- (b) 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 the 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.<sup>7</sup>

#### ARTICLE 12.8: TRANSPARENCY IN DEVELOPING AND APPLYING REGULATIONS<sup>8</sup>

Further to Chapter Twenty-One (Transparency):

- (a) Each Party shall establish or maintain appropriate mechanisms for responding to inquiries from interested persons regarding its regulations relating to the subject matter of this Chapter.
- (b) If, consistent with paragraphs 2 and 3 of Article 21.1 (Publication), a Party does not provide advance notice of and opportunity for comment on regulations it proposes to adopt relating to the subject matter of this Chapter, it shall, to the extent possible, address in writing the reasons for not doing so.
- (c) To the extent possible, each Party shall allow reasonable time between publication of final regulations relating to the subject matter of this Chapter and their effective date.

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<sup>7</sup> For greater certainty, nothing in Article 12.7 prejudices either Party's position in any other forum with regard to matters covered by Article 12.7.

<sup>8</sup> For greater certainty, "regulations" includes regulations establishing or applying to licensing authorization or criteria at the central, regional, and local levels of government.

## **ARTICLE 12.9: RECOGNITION**

1. For purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorization, licensing, or certification of services suppliers, and subject to the requirements of paragraph 5, 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 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 12.3 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. On request of the other Party, a Party shall promptly provide information, including appropriate descriptions, concerning any recognition agreement or arrangement that the Party or relevant bodies in its territory has concluded.
4. 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.
5. 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.
6. Annex 12-A 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 12.10: PAYMENTS AND TRANSFERS<sup>9</sup>**

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 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;

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<sup>9</sup> For greater certainty, Annex 11-G (Transfers) applies to Article 12.10.

- (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 12.11: DENIAL OF BENEFITS

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

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

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 or of the denying Party that has no substantial business activities in the territory of the other Party. If, before denying the benefits of this Chapter, the denying Party knows that the enterprise has no substantial business activities in the territory of the other Party and that persons of a non-Party, or of the denying Party, own or control the enterprise, the denying Party shall, to the extent practicable, notify the other Party before denying the benefits. If the denying Party provides such notice, it shall consult with the other Party at the other Party's request.

#### ARTICLE 12.12: SPECIFIC COMMITMENTS

1. Annex 12-B sets out specific commitments with regard to the supply of express delivery services.

2. Annex 12-C sets out specific commitments with regard to consultations regarding non-conforming measures adopted or maintained by a regional level of government.

#### ARTICLE 12.13: 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 a covered investment;

**enterprise** means an “enterprise” as defined in Article 1.4 (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;

**professional services** means services, the supply of which requires specialized post-secondary education, or equivalent training or experience or examination, 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;

**service supplier of a Party** means a person of that Party that seeks to supply or supplies a service;<sup>10</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>10</sup> For purposes of Articles 12.2 and 12.3, “service suppliers” has the same meaning as “services and service suppliers” as used in Articles II and XVII of GATS.

**ANNEX 12-A**  
**PROFESSIONAL SERVICES**

1. On request of the other Party, a Party shall provide information concerning standards and criteria for the licensing and certification of professional services suppliers, including information concerning the appropriate regulatory or other body to consult regarding these standards and criteria. These standards and criteria include requirements regarding education, examinations, experience, conduct and ethics, professional development and re-certification, scope of practice, local knowledge, and consumer protection.
2. Where the Parties agree, each Party shall encourage the relevant bodies in its territory to develop mutually acceptable standards and criteria for licensing and certification, to provide recommendations to the Joint Committee on mutual recognition, and to develop procedures for the temporary licensing arrangements of professional service suppliers of the other Party with respect to professional services sectors or subsectors mutually agreed by the Parties. These sectors or subsectors may include those listed in Appendix 12-A-1.
3. The Parties hereby establish a Professional Services Working Group, comprising representatives of each Party, to facilitate the activities set out in paragraphs 1 and 2. The Working Group shall meet within one year after the date this Agreement enters into force unless the Parties otherwise agree.
4. The Working Group should consider, for professional services generally and, as appropriate, for individual professional services, the following matters:
  - (a) procedures for fostering the development of mutual recognition arrangements between relevant professional bodies of the Parties;
  - (b) the feasibility of developing model procedures for the licensing and certification of professional services suppliers;
  - (c) measures inconsistent with Article 12.2 or 12.4 maintained at the regional level of government that would prevent the development of a mutual recognition arrangement or prevent a service supplier of a Party from receiving the benefits of such an arrangement; and
  - (d) other issues of mutual interest relating to the supply of professional services.
5. The Working Group shall consider, as appropriate, relevant bilateral, plurilateral, and multilateral agreements relating to professional services.
6. The Working Group shall report to the Joint Committee on its progress, including with respect to any recommendation for initiatives to promote mutual recognition of standards and criteria and temporary licensing, and on the further direction of its work, no later than two years after the date this Agreement enters into force.
7. On receipt of a recommendation referred to in paragraphs 2 and 6, the Joint Committee shall review the recommendation within a reasonable time to determine whether it is consistent with this Agreement. Based on the results of that review and as otherwise appropriate, each Party shall work

with and encourage its respective relevant bodies to implement the recommendation within a mutually agreed time.

8. The Joint Committee shall review the implementation of this Annex at least once every three years.

**APPENDIX 12-A-1**  
**SECTORS FOR MUTUAL RECOGNITION AND TEMPORARY LICENSING**

1. Engineering Services
2. Architectural Services
3. Veterinary Services

## ANNEX 12-B EXPRESS DELIVERY SERVICES

1. 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.<sup>11</sup>
2. The Parties confirm their desire to maintain at least the level of market openness for express delivery services that is in existence on the date this Agreement is signed. If a Party considers that the other Party is not maintaining such level of access, it may request consultations. The other Party shall afford adequate opportunity for consultations and, to the extent possible, shall provide information in response to inquiries regarding the level of access and any related matter.
3. Each Party shall ensure that, where a Party's 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, that supplier does not abuse its monopoly position to act in the territory of the Party in a manner inconsistent with the Party's obligations under Article 11.3 (National Treatment), Article 11.4 (Most-Favored-Nation Treatment), Article 12.2, 12.3, or 12.4, or Article 16.2 (Designated Monopolies). Further to Article 1.2 (Relation to Other Agreements), the Parties also reaffirm their rights and obligations under Article VIII of GATS with respect to express delivery services.<sup>12</sup>
4. Each Party confirms its intention to prevent revenues derived from monopoly postal services from being directed to confer an advantage to its own or any other competitive supplier's express delivery services.<sup>13</sup>

5 For greater certainty, this Annex does not limit a Party's right to adopt or maintain a measure outside the scope of this Chapter or a measure regarding transportation services as set out in a Party's Schedule to Annex I or II.

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<sup>11</sup> For greater certainty, "express delivery services" does not include:

- (a) for the United States, delivery of letters subject to the *Private Express Statutes* (18 U.S.C. 1693 *et seq.*, 39 U.S.C. 601 *et seq.*), but does include delivery of letters subject to the exceptions to, or suspensions promulgated under, those statutes, which permit private delivery of extremely urgent letters; and
- (b) for Korea, collecting, processing, and delivering letters for which exclusive rights are reserved for the Korean Postal Authority (KPA) under the *Postal Service Act*, but does include collecting, processing, and delivering commercial documents subject to Article 3 of the *Enforcement Decree of the Postal Services Act*.

<sup>12</sup> Neither paragraph 3 nor Article 16.2.1(d) (Designated Monopolies) shall be construed to require a Party to afford a private express delivery service supplier rights of access to the postal network of its monopoly supplier of postal services.

<sup>13</sup> For greater certainty, paragraph 4 shall not be construed to require a Party to amend relevant existing laws and regulations or to prevent KPA or the U.S. Postal Service from supplying any services.

**ANNEX 12-C**  
**CONSULTATIONS REGARDING NON-CONFORMING MEASURES**  
**MAINTAINED BY A REGIONAL LEVEL OF GOVERNMENT**

If a Party considers that an Annex I non-conforming measure applied by a regional level of government of the other Party creates a material impediment to a service supplier of the Party, an investor of the Party, or a covered investment, it may request consultations with regard to that measure. The Parties shall enter into consultations with a view to exchanging information on the operation of the measure and to considering whether further steps are necessary and appropriate.