

CHAPTER 11

CROSS-BORDER TRADE IN SERVICES

Article 11.1: Definitions

For purposes of this Chapter:

cross-border provision of a service or **cross-border trade in services** means the provision 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 provision of a service in the territory of a Party by an investment, as defined in Article 10.1, in that territory;

enterprise means an "enterprise" as defined in Article 2.1, and a branch of an enterprise;

enterprise of a Party means an enterprise constituted or organized under the law of a Party and a branch, located in the territory of a Party and carrying out business activities there;

financial services means any service of a financial nature including those defined in paragraph 5(a) on Annex of Financial Services of GATS;

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;

quantitative restriction means a non-discriminatory measure that imposes limitations on:

- (a) the number of service providers, whether in the form of a quota, a monopoly or an economic needs test, or by any other quantitative means; or
- (b) the operations of any service provider, whether in the form of a quota or an economic needs test, or by any other quantitative means;

service provider of a Party means a person of a Party that seeks to provide or provides a service; and

specialty air services means aerial mapping, aerial surveying, aerial photography, forest fire management, fire fighting, aerial advertising, flight training, aerial inspection and surveillance, and aerial spraying services.

Article 11.2: Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to cross-border trade in services by service providers of the other Party, including measures with respect to:

- (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 and transportation systems in

connection with the provision of a service;

(d) the presence in its territory of a service provider 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. For purposes of this Chapter, measures adopted or maintained by a Party mean measures adopted or maintained by government or non-governmental bodies in the exercise of any regulatory, administrative or other governmental authority delegated to it by that government.

3. This Chapter does not apply to:

(a) cross-border trade in financial services;

(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:

(i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;

(ii) specialty air services;

(iii) glider towing, parachute jumping, aerial construction, heli-logging, aerial sightseeing; and

(iv) computerized reservation system;

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

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

(e) services provided in the exercise of governmental authority such as law enforcement, correctional services, income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care.

4. Notwithstanding subparagraph 3(e), if services provided in the exercise of governmental authority are provided in the territory of a Party such as law enforcement, correctional services, income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care on a commercial basis or in competition with one or more service providers, such services shall be covered by the provisions of this Chapter.

5. Nothing in this Chapter shall be construed to 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, or to confer any right on that national with respect to such access or employment.

Article 11.3: National Treatment

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

Article 11.4: Local Presence

Neither Party may require a service provider 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 11.5: Reservations

1. Articles 11.3 and 11.4 do not apply to:
 - (a) any existing non-conforming measure that is maintained by:
 - (i) a Party at the national level, as set out in its Schedule to Annex I;
 - or
 - (ii) a local 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 11.3 and 11.4.
2. Articles 11.3 and 11.4 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out in its Schedule to Annex II.

Article 11.6: Quantitative Restrictions

1. Each Party shall set out in its Schedule to Annex III any quantitative restriction that it maintains at the national level.
2. Each Party shall notify the other Party of any quantitative restriction that it adopts, other than at the local government level, after the date of entry into force of this Agreement and shall set out the restriction in its Schedule to Annex III.
3. The Parties shall periodically, but in any event at least every two years, endeavor to negotiate the liberalization or removal of the quantitative restrictions set out in Annex III pursuant to paragraphs 1 and 2.

Article 11.7: Future Liberalization

1. Through future negotiations, to be scheduled every two years by the Commission after the date of entry into force of this Agreement, the Parties will further deepen liberalization with a view to reaching the reduction or elimination of the remaining restrictions scheduled in conformity with Article 11.5, on a mutually advantageous basis and ensuring an overall balance of rights and obligations.
2. If a Party makes any further liberalization, in conformity with Article 11.5 by an agreement with a non-Party, it shall afford adequate opportunity to the other Party to negotiate treatment granted therein on a mutually advantageous basis and with a view to securing an overall balance of rights and obligations.

Article 11.8: Liberalization of Non-Discriminatory Measures

Each Party shall set out in its Schedule to Annex IV its commitments to liberalize quantitative restrictions, licensing requirements, performance requirements or other non-discriminatory measures.

Article 11.9: Procedures

The Commission shall establish procedures for:

- (a) a Party to notify and include in its relevant Schedule:
 - (i) quantitative restrictions in accordance with Article 11.6.2;
 - (ii) commitments pursuant to Article 11.8; and
 - (iii) amendments of measures referred to in Article 11.5.1(c); and
- (b) consultations on reservations, quantitative restrictions or commitments with a view to further liberalization.

Article 11.10: Licensing and Certification

1. With a view to ensuring that any measure adopted or maintained by a Party related to requirements and procedures to the licensing or certification of nationals of the other Party does not constitute an unnecessary barrier to cross-border trade in services, each Party shall endeavor to ensure that any such measure:

- (a) is based on objective and transparent criteria, such as competence and the ability to provide a service;
- (b) is not more burdensome than necessary to ensure the quality of a service; and
- (c) does not constitute a disguised restriction on the cross-border provision of a service.

2. Where a Party recognizes, unilaterally or by an agreement or arrangement, education, experience, licenses or certifications obtained in the territory of a non-Party, the Party shall afford the other Party an adequate opportunity to demonstrate that education, experience, licenses or certifications obtained in the other Party's territory should also be recognized or to conclude an agreement or arrangement of comparable effect.

3. Annex 11.10 applies to measures adopted or maintained by a Party relating to the licensing or certification of professional service providers.

Article 11.11: Denial of Benefits

Subject to prior notification and consultation in accordance with Articles 17.4 and 19.4, a Party may deny the benefits of this Chapter to a service provider of the other Party where the Party establishes that the service is being provided by an enterprise that is owned or controlled by persons of a non-Party and that has no substantive business activities in the territory of the other Party.

Annex 11.10 Professional Services

Objectives

1. The objective of this Annex is the establishment of rules to be followed by the Parties in the reduction and gradual elimination, within their territories of the barriers in the rendering of professional services.

Processing of Applications for Licenses and Certifications

2. Each Party shall ensure that its competent authorities, within a reasonable time after the submission by a national of the other Party of an application for a license or certification:

- (a) where the application is complete, make a determination on the application and inform the applicant of that determination; or
- (b) where the application is not complete, inform the applicant, without undue delay, of the status of the application and the additional information that is required under the Party's law.

Development of Professional Standards

3. 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 providers and to provide recommendations on mutual recognition to the Commission.

4. The standards and criteria referred to in paragraph 3 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.

5. Upon receipt of a recommendation referred to in paragraph 3, 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

6. Where the Parties agree, each Party shall encourage the relevant bodies in its territory to develop procedures for the temporary licensing of professional service providers of the other Party.

Review

7. The Commission shall periodically, at least once every three years, review the implementation of this Section.