

CHAPTER 8

CROSS-BORDER TRADE IN SERVICES

Article 8.1: Definitions

For purposes of this Chapter:

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repair and maintenance services means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance;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

enterprise means an "enterprise" as defined in Article 1.2 (General Definitions) and a branch of an enterprise;

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 business activities there;

selling and marketing of air transport services means 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;

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; and

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

Article 8.2: Scope

1. This Chapter shall apply 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. In addition to paragraph 1, Articles 8.5, 8.8 and 8.9 shall also apply to measures adopted or maintained by a Party affecting the supply of a service in its territory by a covered investment.^{1,2}

¹ For greater certainty, the scope and coverage of application of Articles 8.5, 8.8, and 8.9 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 this Article, subject to any applicable non-conforming measures and exceptions.

² Nothing in this Chapter, including paragraph 3, is subject to investor-state dispute settlement under Section C (Investor-State Dispute Settlement) of Chapter 11 (Investment).

4. This Chapter shall not apply to:
 - (a) financial services as defined in Article 1.2(General Definitions)
 - (b) government procurement;
 - (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;
 - (ii) the selling and marketing of air transport services; and
 - (iii) computer reservation system services;
 - (d) cabotage in maritime transport services;
 - (e) subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance; or
 - (f) services supplied in the exercise of governmental authority.

5. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding nationality, citizenship, residence or employment on a permanent basis.

6. Nothing in this Chapter shall prevent a Party from applying measures to regulate the entry of natural persons 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 natural persons across, its borders, provided that those measures are not applied in a manner as to nullify or impair the benefits accruing to the other Party under this Chapter.³

³ The sole fact of requiring a visa for natural persons of the other Party and not for those of others shall not be regarded as nullifying or impairing benefits under this Chapter.

Article 8.3: National Treatment⁴

1. Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords, in like circumstances, to its own services and 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 favourable than the most favourable treatment accorded, in like circumstances, by that regional level of government to service suppliers of the Party of which it forms a part.

Article 8.4: Most-Favoured-Nation Treatment

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

Article 8.5: Market Access

Neither Party shall 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 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;⁵ or

⁴ For greater certainty, whether treatment is accorded in “like circumstances” under this Article or Article 8.4 depends on the totality of the circumstances, including whether the relevant treatment distinguishes between services or service suppliers on the basis of legitimate public welfare objectives.

⁵ This sub-subparagraph does not cover measures of a Party that limit inputs for the supply of services.

- (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 8.6: Local Presence

Neither Party shall 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 8.7: Non-Conforming Measures

1. Articles 8.3 through 8.6 shall 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;⁶
 - (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 8.3, 8.4, 8.5 or 8.6.
2. Articles 8.3 through 8.6 shall not apply to any measure that a Party

⁶ For Korea, “local level of government” means a local government as defined in the *Local Autonomy Act*.

adopts or maintains with respect to sectors, sub-sectors or activities, as set out in its Schedule to Annex II.

Article 8.8: Domestic Regulation

1. Each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

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 recognising the right to regulate and to introduce new regulations on the supply of services in order to meet its policy objectives, each Party shall endeavour to ensure 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; and
- (b) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

3. In determining whether a Party is in conformity with its obligations under paragraph 2, account shall be taken of international standards of relevant international organisations applied by that Party.⁷

4. If a Party requires authorisation for the supply of a service, it shall ensure that its competent authorities:

- (a) within a reasonable period of time after the submission of an application considered complete under its laws and regulations, inform the applicant of the decision concerning the application;
- (b) to the extent practicable, establish an indicative timeframe for the processing of an application;
- (c) if an application is rejected, to the extent practicable, inform the applicant of the reasons for the rejection, either directly or on request, as appropriate;
- (d) on request of the applicant, provide, without undue delay, information concerning the status of the application;

⁷ “Relevant international organisations” refers to international bodies whose membership is open to the relevant bodies of the Parties.

- (e) to the extent practicable, provide the applicant with the opportunity to correct minor errors and omissions in the application and endeavour to provide guidance on the additional information required; and
- (f) if they deem appropriate, accept copies of documents that are authenticated in accordance with the Party's laws in place of original documents.

5. Each Party shall ensure that any authorisation fee charged by any of its competent authorities is reasonable, transparent and does not, in itself, restrict the supply of the relevant service.⁸

6. If licensing or qualification requirements include the completion of an examination, each Party shall ensure that:

- (a) the examination is scheduled at reasonable intervals; and
- (b) a reasonable period of time is provided to enable interested persons to submit an application.

7. Each Party shall ensure that there are procedures in place domestically to assess the competency of professionals of the other Party.

8. Paragraphs 1 through 7 shall not apply to the non-conforming aspects of measures that are not subject to the obligations under Article 8.3 or 8.5 by reason of an entry in a Party's Schedule to Annex I, or to measures that are not subject to the obligations under Article 8.3 or 8.5 by reason of an entry in a Party's Schedule to Annex II.

9. If the results of the negotiations related to paragraph 4 of Article VI of GATS or the results of any similar negotiations undertaken in other multilateral fora in which the Parties participate enter into effect, the Parties shall jointly review these results with a view to bringing them into effect, as appropriate, under this Agreement.

Article 8.9: Transparency in Developing and Applying Regulations

1. Each Party shall establish or maintain appropriate mechanisms for responding to inquiries from interested persons regarding its regulations relating

⁸ For purposes of this paragraph, authorisation fees do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

to the subject matter of this Chapter.

2. If, consistent with Article 15.2 (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.

3. 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.

Article 8.10: Recognition

1. For purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing or certification of services suppliers, and subject to the requirements of paragraph 4, a Party may recognise the education or experience obtained, requirements met, or licences or certifications granted in a particular country. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.

2. Where a Party recognises, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licences or certifications granted in the territory of a non-Party, nothing in Article 8.4 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 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, licences or certifications obtained or requirements met in the other Party's territory should be recognised.

4. Neither Party shall accord recognition in a manner that would constitute a means of discrimination between countries in the application of its standards or criteria for the authorisation, licensing or certification of services suppliers, or a disguised restriction on trade in services.

Article 8.11: Payments and Transfers⁹

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 laws¹⁰ 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 8.12: 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 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

⁹ For greater certainty, Annex 11-E (Transfers) shall apply to this Article.

¹⁰ For greater certainty, this Article does not preclude the equitable, non-discriminatory, and good faith application of a Party's laws relating to its social security, public retirement or compulsory savings programmes.

the other Party if the service supplier is an enterprise owned or controlled by persons of a non-Party or by persons of the denying Party that has no substantial business activities in the territory of the other Party.