

## CHAPTER 7

### CROSS-BORDER TRADE IN SERVICES

#### **Article 7.1: Definitions**

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repair and maintenance services** means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance;

**airport operation services** means the supply of air terminal, airfield and other airport infrastructure operation services on a fee or contract basis. Airport operation services do not include air navigation services;

**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 Area of a Party into the Area of the other Party;
- (b) in the Area of a Party to a person of the other Party; or
- (c) by a natural person of a Party in the Area of the other Party,

but does not include the supply of a service in the Area of a Party by a covered investment;

**ground handling services** means the supply at an airport, on a fee or contract basis, of the following services: airline representation, administration and supervision; passenger handling; baggage handling; ramp services; catering (except the preparation of the food); air cargo and mail handling; fuelling of an aircraft; aircraft servicing and cleaning; surface transport; and flight operations, crew administration and flight planning. Ground handling services do not include: self-handling; security; line maintenance; aircraft repair and maintenance; or management or operation of essential centralised airport infrastructure, such as de-icing facilities, fuel distribution systems, baggage handling systems and fixed intra-airport transport systems;

**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 or 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;

**service supplier of a Party** means a person of a Party that seeks to supply or supplies a service; and

**specialty air services** means any specialised commercial operation using an aircraft whose primary purpose is not the transportation of goods or passengers, such as aerial fire-fighting, flight training, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, helicopter-lift for logging and construction, and other airborne agricultural, industrial and inspection services.

## **Article 7.2: Scope**

1. This Chapter shall apply to measures adopted or maintained by a Party affecting cross-border trade in services. Such measures include measures affecting:

- (a) the production, distribution, marketing, sale or 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 the Party's Area 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. In addition to paragraph 1, Articles 7.3, 7.8 and 7.10 shall also apply to measures adopted or maintained by a Party affecting the supply of a service in its Area by a covered investment.

3. This Chapter shall not apply to:

- (a) financial services as defined in Article 8.1 (Definitions) of Chapter 8 (Financial Services);
- (b) government procurement;
- (c) services supplied in the exercise of governmental authority in a Party's Area; or

- (d) subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance, or to any conditions attached to the receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to domestic services, service consumers or service suppliers.

4. This Chapter does not impose any obligation on a Party with respect to a natural person of the other Party who seeks access to its employment market or who is employed on a permanent basis in its Area, and does not confer any right on that natural person with respect to that access or employment.

5. This Chapter shall not apply to air services, including domestic and international air transportation services, whether scheduled or non-scheduled, or to related services in support of air services, other than the following:

- (a) aircraft repair and maintenance services;
- (b) selling and marketing of air transport services;
- (c) computer reservation system services;
- (d) specialty air services;
- (e) airport operation services; and
- (f) ground handling services.

6. In the event of any inconsistency between this Chapter and a bilateral, plurilateral or multilateral air services agreement to which the Parties are party, the air services agreement shall prevail in determining the rights and obligations of the Parties.

7. If the Parties have substantially equivalent obligations under this Agreement and a bilateral, plurilateral or multilateral air services agreement to which the Parties are party, a Party may invoke the dispute settlement procedures pursuant to Chapter 18 (Consultations and Dispute Settlement) only after any dispute settlement procedures in the other agreement have been exhausted.

8. If the *Annex on Air Transport Services* to GATS is amended, the Parties shall jointly review any new definitions with a view to aligning the definitions in this Agreement with those definitions, as appropriate.

### **Article 7.3: Market Access**

Neither Party shall adopt or maintain, either on the basis of a regional subdivision or on the basis of its entire Area, 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 service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test<sup>1</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 7.4: National Treatment<sup>2</sup>**

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.

#### **Article 7.5: 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 Area as a condition for the cross-border supply of a service.

#### **Article 7.6: 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.

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<sup>1</sup> Subparagraph (a)(iii) does not cover measures of a Party which limit inputs for the supply of services.

<sup>2</sup> For greater certainty, whether treatment is accorded in “like circumstances” under Articles 7.4 or 7.6 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.

## **Article 7.7: Non-Conforming Measures**

1. Articles 7.3, 7.4, 7.5 and 7.6 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) the regional level of government, as set out by that Party in its Schedule to Annex I; or
    - (iii) the 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 it existed immediately before the amendment, with Articles 7.3, 7.4, 7.5 and 7.6.

2. Articles 7.3, 7.4, 7.5 and 7.6 shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out by that Party in its Schedule to Annex II.

## **Article 7.8: 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. Each Party shall maintain judicial, arbitral or administrative tribunals or procedures which provide, on request of an affected service supplier, for the prompt review of and, if justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.
3. If a Party requires authorisation for the supply of a service, it shall ensure that its competent authorities:
  - (a) to the extent practicable, permit an applicant to submit an application at any time;

- (b) allow a reasonable period of time for the submission of an application if specific time periods for applications exist;
- (c) taking into account their competing priorities and resource constraints, endeavour to accept applications in electronic format;
- (d) to the extent practicable, establish an indicative timeframe for the processing of an application;
- (e) if an application is incomplete, to the extent practicable:
  - (i) provide the applicant with the opportunity to correct minor errors and omissions in the application; and
  - (ii) identify additional information required;
- (f) within a reasonable period of time after the submission of an application considered complete under the laws and regulations of the Party, inform the applicant of the decision concerning the application;
- (g) on request of an applicant, provide, without undue delay, information concerning the status of the applicant's application;
- (h) 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. A Party shall ensure that its competent authorities do not prevent the applicant from submitting another application;
  - (i) if they deem appropriate, accept copies of documents that are authenticated in accordance with the Party's laws and regulations in place of original documents;
  - (j) reach and administer their decisions in an independent manner and ensure that their procedures are impartial; and
  - (k) ensure that the authorisation, once granted, enters into effect without undue delay, subject to the applicable terms and conditions.

4. Each Party shall endeavour to avoid requiring an applicant to approach more than one competent authority for each application for authorisation. A Party may require multiple applications for authorisation if a service is within the jurisdiction of multiple competent authorities.

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<sup>3</sup>.

6. Each Party shall make publicly available the information necessary for service suppliers to comply with the requirements and procedures for obtaining, maintaining, amending and renewing such authorisation. Such information shall include, *inter alia*, if it exists:

- (a) fees;
- (b) contact information of relevant competent authorities;
- (c) procedures for appeal or review of decisions concerning applications;
- (d) procedures for monitoring or enforcing compliance with the terms and conditions of licences;
- (e) opportunities for public involvement, such as through hearings or comments;
- (f) indicative timeframes for processing of an application;
- (g) the requirements and procedures; and
- (h) technical standards.

7. 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.

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

9. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards, and licensing requirements and procedures 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:

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<sup>3</sup> For the 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.

- (a) ensure that any such measures that it adopts or maintains are:
  - (i) based on objective and transparent criteria, such as competence and the ability to supply the service; and
  - (ii) in the case of licensing procedures, not in themselves a restriction on the supply of the service; and
- (b) endeavour to ensure that any such measures that it adopts or maintains are not more burdensome than necessary to ensure the quality of the service.

10. In determining whether a Party is in conformity with its obligations under paragraph 9, account shall be taken of international standards of relevant international organisations<sup>4</sup> applied by that Party.

11. Paragraphs 1 through 10 shall not apply to a measure listed in a Party's Schedule to Annex I or Annex II to the extent that the measure would otherwise be inconsistent with Articles 7.3 or 7.4.

12. 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 the Parties participate, enter into effect, the Parties shall jointly review such results and consider bringing them into effect, as appropriate, under this Agreement.

13. The Parties shall encourage their competent authorities, when adopting technical standards, to adopt technical standards developed through open and transparent processes, and shall encourage any body designated to develop technical standards to use open and transparent processes.

## **Article 7.9: Recognition**

1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing or certification of service 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 the Area of the other Party or in the territory of a non-Party. That recognition, which may be achieved through harmonisation or otherwise, may be based on an agreement or arrangement with the Party or non-Party concerned, or may be accorded autonomously.

2. If 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 7.6 shall be construed to require the Party to

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<sup>4</sup> The term "relevant international organisations" refers to the international bodies whose membership is open to the Parties.

accord recognition to the education or experience obtained, requirements met, or licences or certifications granted, in the Area 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 to the other Party, on request, to negotiate its accession to that agreement or arrangement, or to negotiate a comparable agreement or arrangement. If a Party accords recognition autonomously, it shall afford adequate opportunity to the other Party to demonstrate that education, experience, licences or certifications obtained or requirements met in that other Party's Area should be recognised.

4. A Party shall not accord recognition in a manner that would constitute a means of discrimination between the other Party and non-Parties in the application of its standards or criteria for the authorisation, licensing or certification of service suppliers, or a disguised restriction on trade in services.

5. As set out in Annex 7-A, the Parties shall endeavour to facilitate trade in professional services, including through the future work on professional services.

#### **Article 7.10: Transparency**

1. Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding its laws and regulations that relate to the subject matter of this Chapter.

2. If a Party does not provide advance notice and opportunity for comment in accordance with Article 16.2.2 (Publication) of Chapter 16 (Transparency) with respect to laws and regulations that relate to the subject matter of this Chapter, it shall, to the extent practicable, provide in writing or otherwise notify interested persons of the reasons for not doing so.

3. To the extent possible, each Party shall allow reasonable time between publication of final laws and regulations and the date when they enter into effect.

#### **Article 7.11: Denial of Benefits**

1. A Party may, at any time, deny the benefits of this Chapter to a service supplier of the other Party if the service supplier is:

- (a) an enterprise owned or controlled by persons of a non-Party; and
- (b) 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 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 Area of the other Party.

### **Article 7.12: Payments and Transfers**

1. Each Party shall permit all transfers and payments that relate to the cross-border supply of services to be made freely and without delay into and out of its Area.

2. Each Party shall permit transfers and payments that relate to the cross-border supply of services to be made in a freely usable currency at the market rate of exchange that prevails at the time of transfer.

3. Notwithstanding paragraph 1 and paragraph 2, a Party may prevent or delay a transfer or payment through the equitable, non-discriminatory and good faith application of its laws and regulations 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) criminal or penal offences;
- (d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; or
- (e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

### **Article 7.13: Cooperation**

1. The Parties shall endeavour to cooperate on issues in this Chapter. Each Party may identify sectors or subsectors for cooperation initiatives, and may facilitate a dialogue upon agreement by the Parties.

2. The Parties shall strengthen cooperation in education services, as set out in Annex 7-B.

#### **Article 7.14: Contact Points**

1. Each Party shall designate one or more contact points to facilitate communication between the Parties on any matter covered by this Chapter, and shall provide details of such contact points to the other Party.
2. Each Party shall notify the other Party promptly of any amendments to the details of its contact points.