

## CHAPTER 11: CROSS-BORDER TRADE IN SERVICES

### Article 11.01 Definitions

For purposes of this Chapter, the following terms shall be understood as:

**cross-border trade in services or cross-border service:** 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 the services consumer of the other Party; or
- (c) by a service provider of a Party, through presence of nationals 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 10.01 (Definitions), in that territory;

**enterprise:** an "enterprise" as defined in Chapter 2 (General Definitions), and a branch of an enterprise;

**enterprise of a Party:** 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;

**services provided in the performing of government functions:** any cross-border service provided by a public institution in non-commercial conditions and without competing with one or more service providers;

**service provider of a Party:** a person of a Party that provides or seeks to provide a cross-border service; and

**specialty air services:** 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.

### Article 11.02 Scope of Application

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 respecting:

- (a) the production, distribution, marketing, sale, and delivery of a cross-border service;

- (b) the purchase or use of, or payment for, a cross-border service;
- (c) the access to and use of distribution and transportation systems in connection with the provision of a cross-border service;
- (d) the presence in its territory of a cross-border 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 cross-border service.

2. For purposes of this Chapter, it shall be understood that the measures adopted or maintained by a Party include the measures adopted or maintained by non-governmental institutions or bodies in the performance of regulatory, administrative or other functions of a governmental nature delegated to them by the Party.

3. This Chapter does not apply to:

- (a) subsidies or grants provided by a Party or a state enterprise, including government-supported loans, guarantees, and insurance;
- (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) the selling and marketing of air transport services; and
  - (iv) computer reservation system (CRS) services;
- (c) government services or functions such as law enforcement, correctional services, income security or insurance, or social security or insurance, social welfare, water supply, public education, public training, health, and child care;
- (d) cross-border financial services;
- (e) cross-border telecommunications services; and
- (f) government procurement done by a Party or state enterprise<sup>1</sup>.

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<sup>1</sup> For purposes of this Chapter, the term "government procurement" will be understood as it is defined in the national legislation of each Party.

4. 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 that access or employment.

#### **Article 11.03 National Treatment**

1. Each Party shall accord to cross-border 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.

2. Specific commitments assumed under this Article shall not be construed to require any Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

#### **Article 11.04 Most-Favored-Nation Treatment<sup>2</sup>**

Each Party shall accord to cross-border services and service providers of the other Party treatment no less favorable than that it accords, in like circumstances, to services and service providers of any non-Party.

#### **Article 11.05 Local Presence**

No 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 11.06 Market Access**

No Party may adopt or maintain 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

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<sup>2</sup> For greater certainty, "Most-Favored-Nation Treatment" is not applicable when a Party autonomously or through an agreement, recognizes the education or experience obtained, requirements met, or licenses or certifications granted in the territory of a Party or a non-Party.

quotas or the requirement of an economic needs test;<sup>3</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 11.07 Permission, Authorization, Licensing, and Certification**

With a view to ensuring that any measure adopted or maintained by a Party relating to the permission, authorization, licensing or certification of nationals of the other Party does not constitute an unnecessary barrier to cross-border trade, 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 cross-border service;

(b) is not more burdensome than necessary to ensure the quality of a cross border service; and

(c) does not constitute a disguised restriction on the cross-border provision of a service.

#### **Article 11.08 Non-conforming Measures**

1. Articles 11.03, 11.04, 11.05, and 11.06 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 or municipal 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 11.03, 11.04, 11.05, and 11.06.

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<sup>3</sup> This clause does not cover measures of a Party that limit inputs for the supply of services.

2. Articles 11.03, 11.04, 11.05, and 11.06 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.

3. Article 11.04 does not apply to the treatment granted by a Party in accordance with any international treaty or agreement, or with regards to the sectors, subsectors, and activities as set out in its Schedule to Annex III.

#### **Article 11.09 Denial of Benefits**

Subject to prior notification and consultation in accordance with Articles 13.04 (Provision of Information) and 15.05 (Consultations), a Party may deny the benefits of this Chapter to a service provider of the other Party where the Party decides, according to its effective law that the service is being provided by an enterprise that is owned or controlled by persons of a non-Party having no substantial business activities in the territory of the other Party.

#### **Article 11.10 Future Liberalization**

The Parties, through future negotiations to be convened by the Commission, shall deepen the liberalization reached in different service sectors, with the aim of eliminating the remaining restrictions listed under Article 11.08 (1) and (2).

#### **Article 11.11 Procedures**

The Parties shall establish procedures for:

- (a) a Party to notify and include in its relevant Schedule the amendments of measures referred to in Article 11.07 (1), (2), and (3); and
- (b) consultations on reservations for further liberalization.

#### **Article 11.12 Disclosure of Confidential Information**

No provision in this Chapter may be construed as imposing on the Parties the obligation to provide confidential information of which the disclosure may be an obstacle to the observance of laws or otherwise be damaging to the public interest, or that may injure legitimate trade interests of state and private enterprises.

#### **Article 11.13 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 11.14 Committee on Investment and Cross-border Trade in Services**

1. The Parties hereby establish the Committee on Investment and Cross-border Trade in Services, as set out in Annex 11.14.

2. The Committee shall hear matters relating to this Chapter and Chapter 10 (Investment) and, without prejudice to the provisions of Article 14.05 (2) (Committees), shall have the following functions:

- (a) supervising the implementation and administration of Chapters 10 (Investment) and 11 (Cross-border Trade in Services);
- (b) discussing matters relating to investment and cross-border trade in services presented by a Party;
- (c) analyzing matters that are discussed in other international fora;
- (d) facilitating the exchange of information between the Parties and cooperating in giving advice on investment and cross-border trade in services; and
- (e) establishing working groups or convening panels of experts on matters of interest to the Parties.

3. The Committee shall meet when necessary or at any other time at the request of any Party. Representatives of other institutions may also take part in its meetings if the relevant authorities deem it appropriate.

## **ANNEX 11.14**

### **Committee on Investment and Cross-border Trade in Services**

The Committee on Investment and Cross-border Trade in Services set up under Article 11.14 shall be composed of:

- (a) in the case of Republic of China (Taiwan), the Ministry of Economic Affairs, represented by the Bureau of Foreign Trade, or its successor;
- (b) in the case of the Republic of El Salvador, Dirección de Administración de Tratados Comerciales, Ministerio de Economía, or its successor; and
- (c) in the case of the Republic of Honduras, Dirección General de Integración Económica y Política Comercial, Secretaría de Estado en los Despachos de Industria y Comercio, or its successor.