

CHAPTER 8

CROSS-BORDER TRADE IN SERVICES

Article 8.1: Scope

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 in respect of:

- (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. Notwithstanding paragraph 1, Articles 8.4, 8.7, and 8.8 shall also apply to measures adopted or maintained by a Party affecting the supply of a service in its territory by a covered investment⁴.

3. This Chapter shall not apply to:

- (a) services supplied in the exercise of governmental authority;
- (b) government procurement;
- (c) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance;
- (d) cabotage in maritime transport services;

⁴ For greater certainty, the scope of Articles 8.4, 8.7, and 8.8 applying 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 specified in Article 8.1, subject to any applicable non-conforming measures and exceptions. Nothing in this Chapter, including this paragraph, is subject to investor-state dispute settlement pursuant to Section B (Investor-State Dispute Settlement) of Chapter 11 (Investment).

(e) measures affecting air traffic rights, however granted, or measures affecting services directly related to the exercise of air traffic rights, other than measures affecting:

- (i) aircraft repair and maintenance services;
- (ii) the selling and marketing of air transport services; and
- (iii) computer reservation system services;

(f) financial services as defined in Article 9.21 (Definitions), except that paragraph 2 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 9.21) in the Party's territory; or

(g) measures affecting natural persons of a Party seeking access to the employment market of the other Party, or measures regarding citizenship, residence or employment on a permanent basis.

Article 8.2 National Treatment⁵

Each Party shall accord to service suppliers of the other Party treatment no less favorable than that it accords, in like circumstances⁶, to its own service suppliers⁷.

Article 8.3: Most-Favored-Nation Treatment

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-Party⁸.

⁵ For greater certainty, nothing in Articles 8.2 or 8.3 shall be interpreted as extending the scope of this Chapter.

⁶ For greater certainty, whether treatment is accorded in "like circumstances" under Articles 8.2 or 8.3 depends on the totality of the circumstances, including whether the relevant treatment distinguishes between services and service suppliers on the basis of legitimate public welfare objectives.

⁷ Nothing in this Article shall 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.

⁸ For the purposes of this Article, the term "non-Party" shall not include the following WTO members within the meaning of the WTO Agreement: (1) Hong Kong, China; (2) Macao, China; and (3) Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei).

Article 8.4: 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:

(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 test⁹; 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 8.5: Local Presence

Neither Party shall require a service supplier of the other Party to establish or maintain a representative office, a branch, or any form of enterprise, or to be resident, in its territory as a condition for the cross-border supply of a service.

Article 8.6: Non-Conforming Measures

1. Articles 8.2, 8.3, 8.4 and 8.5 shall not apply to:

(a) any existing non-conforming measure that is maintained by a Party at:

⁹ This subparagraph does not cover measures of a Party which limit inputs for the supply of services.

(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;

(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraphs (a); or

(c) an amendment to any non-conforming measure referred to in subparagraphs (a), to the extent that the amendment or modification does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 8.2, 8.3, 8.4 and 8.5.

2. Articles 8.2, 8.3, 8.4 and 8.5 shall not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors or activities as set out by that Party in its Schedule to Annex II.

Article 8.7: Transparency

Further to Chapter 17 (Transparency):

(a) each Party shall maintain or establish appropriate mechanisms through the Contact Points stipulated in Article 20.4 (Contact Point), for responding to inquiries from interested persons of a Party regarding its laws and regulations relating to the subject matter of this Chapter; and

(b) to the extent possible, each Party shall allow a reasonable period of time between publication of final laws and regulations related to the subject matter of this Chapter and their effective date.

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. Each Party shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier of the other Party, for the prompt review of, and where 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. Where authorization is required for the supply of a service, the competent authorities of a Party shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Party shall provide, without undue delay, information concerning the status of the application.

4. While recognizing the right to regulate and to introduce new regulations on the supply of services in order to meet national policy objectives, and 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, each Party shall aim to ensure that such measures are:

(a) based on objective and transparent criteria, such as competence and the ability to supply the service;

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

(c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

5. For the purpose of this Chapter, Reference Paper on Services Domestic Regulation is incorporated into and form an integral part of this Chapter, *mutatis mutandis*.

Article 8.9: Recognition

1. For the purposes of the fulfillment, 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, or encourage its relevant competent bodies to 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 between the Party and the particular country concerned or their relevant competent bodies, 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 8.3 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 to negotiate its accession to such an agreement or arrangement or to negotiate comparable ones 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 that other Party's territory should be recognized.

4. A Party shall not accord recognition in a manner which would constitute a means of discrimination between countries 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.

Article 8.10: Payments and Transfers

1. Each Party shall permit all transfers and payments related 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 related 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 related 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.

4. Nothing in this Chapter shall affect the rights and obligations of a Party as a member of the International Monetary Fund under the Articles of Agreement of the International Monetary Fund (hereinafter referred to as the “Articles of Agreement”), including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its commitments under this Chapter regarding such transactions, except at the request of the International Monetary Fund.

Article 8.11: 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 adopts or maintains measures with respect to 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.

Article 8.12: Public Telecommunications Services¹⁰

1. For the purpose of this Chapter, the Annex on Telecommunications of the GATS Agreement and Telecommunications Reference Paper are incorporated into and form an integral part of this Chapter *,mutatis mutandis*.

2. Neither Party shall prevent suppliers of public telecommunications services from choosing the technologies or telecommunication facilities they wish to use to supply their services.

3. Relating to non-discriminatory treatment of telecommunication facilities:

(a) neither Party shall accord less favourable treatment to telecommunication facilities created, produced, supplied, leased or sold by any enterprise of the other Party than it accords to other like telecommunication facilities; and

¹⁰ For greater certainty, this Article does not prohibit either Party from requiring a service supplier to establish a commercial presence and obtain a licence to supply a public telecommunications network or service in its territory.

(b) neither Party shall take any unreasonable or discriminatory measures to prevent an enterprise of the other Party from supplying, leasing or selling their telecommunication facilities in the territory of the former Party.

Article 8.13: 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 does not include so-called line maintenance;

computer reservation system services means services provided by computerized 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 a Party into the territory of the other Party;
- (b) in the territory of a Party to the service consumer of the other Party; or
- (c) by a service supplier of a Party, through presence of natural persons of that 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;

measure means a measure as defined in Article 1.5 (General Definitions) and includes any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;

measures adopted or maintained by a Party means measures taken 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;

natural person of a Party means a national or a permanent resident of a Party under its laws. Until such time as China enacts its law on treatment of permanent residents of foreign countries, the obligations of each Party with respect to the permanent residents of the other Party shall be limited to the extent of its obligations under the GATS;

person means a natural person or an enterprise;

qualification procedures means administrative procedures relating to the administration of qualification requirements;

qualification requirements means substantive requirements which a service supplier is required to fulfil in order to obtain certification or a license;

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 a service.