

CHAPTER 8 : CROSS-BORDER TRADE IN SERVICES

ARTICLE 8.1 : DEFINITIONS

For purposes of this Chapter:

1. **central level of government** means
 - (a) for the United States, the federal level of government; and
 - (b) for Singapore, the national level of government;
2. **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 an investor of the other Party or a covered investment as defined in Article 15.1 (Definitions);
3. **enterprise** means an entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including a corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organization and a branch of an enterprise;
4. **enterprise of a Party** means an enterprise organized or constituted under the laws of a Party and a branch located in the territory of a Party and carrying out business activities there;
5. **local level of government** means, for Singapore, entities with sub-national legislative or executive powers under domestic law, including Town Councils and Community Development Councils;
6. **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;
7. **regional level of government** means, for the United States, a state of the United States, the District of Columbia, or Puerto Rico; for Singapore, “regional level of government” is not applicable, as Singapore has no government at the regional level;

8. **service supplier** means a person of a Party that seeks to supply or supplies a service;⁸⁻¹ and

9. **specialty air services** means 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 8.2 : SCOPE AND COVERAGE

1.
 - (a) This Chapter applies to measures by a Party affecting cross-border trade in services by service suppliers of the other Party.
 - (b) Measures covered by subparagraph (a) include measures affecting:
 - (i) the production, distribution, marketing, sale and delivery of a service;
 - (ii) the purchase or use of, or payment for, a service;
 - (iii) the access to and use of distribution, transport, or telecommunications networks and services in connection with the supply of a service; and
 - (iv) the provision of a bond or other form of financial security as a condition for the supply of a service.
 - (c) For purposes of this Chapter, **measures by a Party** means measures taken by:
 - (i) central, regional or local governments and authorities; and
 - (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities.
2. Articles 8.5, 8.8 and 8.12 also apply to measures by a Party affecting the supply of a service in its territory by an investor of the other Party or a covered investment as defined in Article 15.1 (Definitions).⁸⁻²

8-1 The Parties understand that **seeks to supply or supplies a service** has the same meaning as **supplies a service** as used in GATS Article XXVIII(g). The Parties understand that for purposes of Articles 8.3, 8.4, and 8.5 of this Agreement, **service suppliers** has the same meaning as **services and service suppliers** as used in GATS Articles II, XVI, and XVII.

8-2 The Parties understand that nothing in this Chapter, including this paragraph, is subject to investor-state dispute settlement pursuant to Section C of Chapter 15 (Investor-State Dispute Settlement).

3. This Chapter does not apply to:

- (a) financial services as defined in Article 10.20 (Definitions), except that paragraph 2 shall apply where the service is supplied by an investor or investment of the other Party that is not an investor or an investment in a financial institution (as defined in Article 10.20.4) in the Party's territory;
- (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 during which an aircraft is withdrawn from service; and
 - (ii) specialty air services; or
- (d) subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance.

4. This Chapter does not 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, and does not confer any right on that national with respect to that access or employment.

- 5. (a) This Chapter does not apply to services supplied in the exercise of governmental authority within the territory of each respective Party.
- (b) For purposes of this Chapter, a **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.

ARTICLE 8.3 : NATIONAL TREATMENT

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

ARTICLE 8.5 : MARKET ACCESS

A Party shall not adopt or maintain, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

- (a) limit
 - (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;⁸⁻³
 - (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; and
- (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

A Party shall not 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, 8.4, 8.5, and 8.6 do 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 8A; or

⁸⁻³ This paragraph does not cover measures of a Party which limit inputs for the supply of services.

- (ii) a regional level of government, as set out by that Party in its Schedule to Annex 8A; or
 - (iii) a local government 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 8.3, 8.4, 8.5, or 8.6.
2. Articles 8.3, 8.4, 8.5, and 8.6 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 8B.

ARTICLE 8.8 : DOMESTIC REGULATION

1. Where a Party requires authorization for the supply of a service, the Party's competent authorities 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. This obligation shall not apply to authorization requirements that are within the scope of Article 8.7.2.
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, each Party shall endeavor to ensure, as appropriate for individual sectors, 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.
3. 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 both Parties participate) enter into effect, this Article shall be amended, as appropriate, after consultations between the Parties, to bring those results into effect under this Agreement. The Parties agree to coordinate on such negotiations, as appropriate.

ARTICLE 8.9 : RECOGNITION

1. For the purposes of the fulfillment, in whole or in part, of its standards or criteria for the authorization, licensing or certification of services suppliers, and subject to the requirements of

paragraph 4, a Party may recognize the education or experience obtained, requirements met, or licenses or certifications granted in a particular country, including the other Party and non-Parties. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.

2. Where a Party recognizes, autonomously or by agreement or arrangement, the education or experience obtained, requirements met or licenses 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 licenses 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 comparable ones with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that education, experience, licenses, 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 authorization, licensing or certification of services suppliers, or a disguised restriction on trade in services.

5. Annex 8C applies to measures by a Party relating to the licensing or certification of professional service suppliers as set out in the provisions of that Annex.

ARTICLE 8.10 : 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.⁸⁻⁴ Such transfers and payments include:

- (a) payments for services;
- (b) funds taken abroad to consume a service;
- (c) interest, royalty payments, management fees, licensing fees, and technical assistance and other fees;
- (d) payments made under a contract; and

⁸⁻⁴ The Parties understand that this Article does not extend to Singapore's requirements in relation to the Central Provident Fund regarding the withdrawal of monies from individual accounts.

- (e) inflows of funds necessary to perform a service.
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 on the date 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 8.11 : DENIAL OF BENEFITS

A Party may deny the benefits of this Chapter to a service supplier of the other Party if:

- (a) the service is being supplied by an enterprise owned or controlled by nationals of a non-Party and the denying Party:
 - (i) does not maintain diplomatic relations with the non-Party; or
 - (ii) 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; or
- (b) the service is being supplied by an enterprise that has no substantial business activities in the territory of the other Party and it is owned or controlled by persons of a non-Party or the denying Party.

ARTICLE 8.12 : TRANSPARENCY IN DEVELOPMENT AND APPLICATION OF REGULATIONS

In addition to the obligations in Chapter 19 (Transparency):

- (a) Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding regulations⁸⁻⁵ relating to the subject matter of this Chapter and their requirements.
- (b) If a Party does not provide advance notice and comment pursuant to Article 19.3 , it shall, to the extent possible, provide by publicly available means the reasons therefor.
- (c) At the time it adopts final regulations relating to the subject matter of this Chapter, each Party shall, to the extent possible, including upon request, address by publicly available means substantive comments received from interested persons with respect to the proposed regulations.
- (d) To the extent possible, each Party shall allow reasonable time between publication of final regulations and their effective date.

ARTICLE 8.13 : IMPLEMENTATION

The Parties will meet annually, or as otherwise agreed, on issues related to implementation of this Chapter and any issues of mutual interest.

⁸⁻⁵ The Parties understand that “regulation” includes regulations establishing or applying to licensing authorization or criteria.