

## CHAPTER 8 CROSS-BORDER TRADE IN SERVICES

### ARTICLE 8.1 DEFINITIONS

For the purposes of this Chapter:

**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 service supplier of a Party, through presence of natural persons 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 9.1 (Definition).

**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; and

**service supplier** means a person of a Party that seeks to supply or supplies a service<sup>9</sup>.

### 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;
  - (iv) the presence in its territory of a service supplier of the other Party; and
  - (v) the provision of a bond or other form of financial security as a

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<sup>9</sup> The Parties understand that **seeks to supply or supplies a service** has the same meaning as **supplies a service** as used in Article XXVIII(g) of GATS. The Parties understand that for the purposes of Articles 8.3 (National Treatment) and 8.4 (Market Access) of this Agreement, **service suppliers** has the same meaning as **services and service suppliers** as used in Articles XVII and XVI of GATS.

condition for the supply of a service.

- (c) For the purposes of this Chapter, measures by a Party mean measures taken by:
  - (i) central or local governments and authorities; and
  - (ii) non-governmental bodies in the exercise of powers delegated by central or local governments and authorities.

2. Articles 8.4 (Market Access) and 8.7 (Domestic Regulation) 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 9.1 (Definition)<sup>10</sup>.

3. This Chapter does not apply to:

- (a) measures affecting the supply of financial services<sup>11</sup> as defined in paragraph 5(a) of the *GATS Annex on Financial Services*. The obligations of each Party with respect to measures affecting the supply of financial services shall be in accordance with its obligations under GATS, the *GATS Annex on Financial Services* and the *GATS Second Annex on Financial Services*, and subject to any reservations thereto. The said obligations are hereby incorporated into this Agreement;
- (b) government procurement;
- (c) air services<sup>12</sup>, 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; and
- (d) subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance, or any conditions attached to the receipt or continued 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

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<sup>10</sup> The Parties understand that nothing in this Chapter, including this paragraph, is subject to Article 9.16 (Settlement of Disputes between a Party and an Investor of the other Party).

<sup>11</sup> For greater certainty, “the supply of services” shall mean the supply of services as defined in Article I:2 of GATS.

<sup>12</sup> For greater certainty, the term “air services” includes traffic rights.

person 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 natural person with respect to that access or employment nor shall it apply to measures regarding citizenship or residence on a permanent basis.

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 the 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.

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 such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under the terms of this Chapter<sup>13</sup>.

### ARTICLE 8.3 NATIONAL TREATMENT

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

### ARTICLE 8.4 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 the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test;
- (b) limit the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) limit 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<sup>14</sup>;
- (d) limit 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

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<sup>13</sup> The sole fact of requiring a visa for natural person of the other Party shall not be regarded as nullifying or impairing benefits under a specific commitment.

<sup>14</sup> This paragraph does not cover measures of a Party which limit inputs for the supply of services.

- (e) 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**

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 8.6 NON-CONFORMING MEASURES**

1. Articles 8.3 (National Treatment), 8.4 (Market Access) and 8.5 (Local Presence) do not apply to:

- (a) any existing non-conforming measure that is maintained by Singapore as set out in its Schedule to Annex 8B:I;
- (b) any existing non-conforming measure that is maintained by Chinese Taipei at:
  - (i) the central level of government as set out in its Schedule to Annex 8B:I; or
  - (ii) a local level of government on the administration of self-governing matters under its Local Government Act;
- (c) the continuation or prompt renewal of any non-conforming measure referred to in subparagraphs (a) and (b); or
- (d) an amendment to any non-conforming measure referred to in subparagraphs (a) and (b) 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 (National Treatment), 8.4 (Market Access) and 8.5 (Local Presence).

2. Articles 8.3 (National Treatment), 8.4 (Market Access), and 8.5 (Local Presence) 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:II.

#### **ARTICLE 8.7 DOMESTIC REGULATION**

1. Where a Party requires authorisation for the supply of a service, the Party's competent authorities shall, within a reasonable period of time after the submission of an application is 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 authorisation requirements that are within the scope of paragraph 2 of Article 8.6 (Non-Conforming Measures).

2. With a view to ensuring that domestic regulation, including measures relating to qualification requirements and procedures, technical standards and licensing requirements, do not constitute unnecessary barriers to trade in services, the Parties shall endeavour 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 the GATS (or the results of any similar negotiations undertaken in other multilateral fora in which the Parties participate) enter into effect for the Parties, 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 8.8 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 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 or customs territory, including the other Party and non-Parties. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the country or customs territory 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 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 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 recognised.

4. A Party shall not accord recognition in a manner which would constitute a means of discrimination between countries or customs territories 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 8.9 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 on the date 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 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;
  - (e) ensuring compliance with orders or judgments in judicial or administrative proceedings; or
  - (f) social security<sup>15</sup>, public retirement or compulsory savings schemes.
4. Nothing in this Chapter shall affect the rights and obligations of the members of the International Monetary Fund under the *Articles of Agreement of the International Monetary Fund*, including the use of exchange actions which are consistent with such *Articles of Agreement*, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its obligations under this Chapter regarding such transactions, except under Article 16.5 (Restrictions to Safeguard the Balance of Payments) or at the request of the International Monetary Fund.

## **ARTICLE 8.10 DENIAL OF BENEFITS**

Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to a service supplier of the other Party if the service is being supplied by an enterprise that has no substantive business operations in the territory of the other Party and that is owned or controlled by persons of a non-Party or the denying Party.

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<sup>15</sup> For greater certainty, social security schemes include compulsory health insurance schemes.