

## CHAPTER 10 CROSS BORDER TRADE IN SERVICES

### Article 10.1: Definitions

For purposes of this Chapter:

1. **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 an investment of an investor of the other Party as defined in Article 9.1 (*Definitions*);

2. **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;

3. **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;

4. **maritime transport service supplier of a Party** means a person, a shipping company or a vessel of one Party that seeks to supply or supplies a maritime service;

5. **port of a Party** means the port of that Party that is open to foreign vessels;

6. **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.

7. **service supplier** means a person of a Party that seeks to supply or supplies a service<sup>1</sup>;

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<sup>1</sup> 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 10.3 (*National Treatment*), 10.4 (*Most-Favoured Nation Treatment*), and 10.5 (*Market Access*) of this Agreement, **service suppliers** has the same meaning as **services and service suppliers** as used in GATS Articles II, XVI, and XVII.

8. **vessel** means any merchant ships engaged in any commercial activity, except a ship that is:

- (a) involved solely in the carriage and transportation of cargo for or belonging to; or
- (b) used in the service of the Government of either Party; and

9. **vessel of a Party** means any vessel under the national flag of a Party, registered in the territory of that Party, or any vessel under the flag of a third country that is owned or operated by a shipping company of one Party. "Operated" means owned, managed, chartered, time chartered, or space chartered.

### **Article 10.2: Scope and Coverage**

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. Measures covered by this paragraph include measures affecting:

- (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; and
- (d) the presence in its territory of a service supplier of the other Party<sup>2</sup>; and
- (e) the provision of a bond or other form of financial security as a condition for the supply of a service.

2. Notwithstanding Article 10.1.1, Articles 10.5, 10.8, 10.9 and 10.15 also applies to measures by a Party affecting the supply of a service in its territory by an investor or an investment as defined in Article 9.1 (*Definitions*)<sup>3</sup>.

3. This Chapter does not apply to:

- (a) financial services, as defined in Article 11.16 (*Definitions*), except as otherwise provided for in Chapter 11 (*Financial Services*);

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<sup>2</sup> It is clarified that this paragraph 1(d) is without prejudice to and is to be read together with Article 10.1.1.

<sup>3</sup> The Parties understand that nothing in this Chapter, including this paragraph, is subject to investor-state dispute settlement pursuant to Article 9.13 (*Investor-State Dispute Settlement*).

- (b) government procurement, as referred to in Chapter 8 (*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;
  - (i) the selling and marketing of air transport services;
  - (i i) computer reservation system (“CRS”) services; and
- (d) subsidies or grants provided by a Party or to 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, including government-supported loans, guarantees and insurance.

4. This Chapter does not impose any obligation on a Party with respect to a natural 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.

5. This Chapter does not apply to services supplied in the exercise of governmental authority within the territory of each respective Party.

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>4</sup>

7. Annex 10A (*Movement of Business Persons*) contains supplementary provisions to this Chapter and provides for additional rights and obligations in relation to the movement of natural persons between the Parties. The commitments made by each Party under Annex 10A (*Movement of Business Persons*) shall be subject to any reservations it has taken in its Annex I, II and III of Chapters 9 (*Investment*), 10 (*Cross-Border Trade in Services*) and Chapter 11 (*Financial Services*).

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<sup>4</sup> The sole fact of requiring a visa for natural persons of the other Party shall not be regarded as nullifying or impairing benefits under a specific commitment.

8. Annex 10B (*Maritime Transport Services*) contains supplementary provisions to this Chapter and provides for additional rights and obligations in relation to maritime transport services between the Parties. The commitments made by each Party under Annex 10B (*Maritime Transport Services*) shall be subject to any reservations it has taken in its Annex I, II and III of Chapters 9 (*Investment*), 10 (*Cross-Border Trade in Services*) and Chapter 11 (*Financial Services*).

### **Article 10.3: 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 10.4: Most-Favoured 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 10.5: 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<sup>5</sup>:

- (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;
  - (i) the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
  - (i i) 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>6</sup>; or

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<sup>5</sup> Subject to the reservations that a Party makes in respect of market access pursuant to Article 10.7, where the cross-border movement of capital is an essential part of a services supplied through the mode of supply referred to in Article 10.1.1(a), that Party is hereby committed to allow such movement of capital.

<sup>6</sup> This paragraph does not cover measures of a Party which limit inputs for the supply of services.

- (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 10.6: 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 10.7: Non-Conforming Measures**

1. Articles 10.3, 10.4, 10.5 and 10.6 do not apply to:
  - (a) any existing non-conforming measure that is maintained by a Party as set out by that Party in its Schedule to Annex I;
  - (b) the continuation or prompt renewal of any non-conforming measure referred to in sub-paragraph (a); or
  - (c) an amendment to any non-conforming measure referred to in sub-paragraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 10.3, 10.4, 10.5 and 10.6.
2. Articles 10.3, 10.4, 10.5 and 10.6 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 II.
3. Article 10.9 shall not apply to:
  - (a) any existing non-conforming measure that is maintained by a Party as set out in its Schedule to Annex I; or
  - (b) any existing or new measure that a Party adopts or maintains with respect to sectors, sub sectors or activities as set out in its Schedule to Annex II.

### **Article 10.8: New Services**

1. The provisions of this Chapter shall apply to measures adopted or maintained by a Party relating to the provision of new services by service suppliers of either Party save as otherwise provided for in this Article.

2. Paragraph 1 is subject to the right of a Party to impose conditions on the supply of any new service by service suppliers of the other Party, provided that:

- (a) such conditions are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties where like conditions prevail, or a disguised restriction on trade in services, and
- (b) in seeking such review and imposing such conditions, the Party shall ensure that there is an overall balance of services commitments undertaken by each Party under this Agreement.

3. A Party imposing any conditions pursuant to paragraph 2 shall determine whether such conditions are likely to be of a permanent nature, and if so, such conditions shall be incorporated in its relevant reservations Annex under Article 10.7 by giving written notice to the other Party, except that a Party shall not make a reservation in respect of new services against Article 10.4. Where such conditions are likely to be of a temporary nature, the Party imposing the conditions shall, if it deems fit, phase them out progressively as circumstances giving rise to the need to impose such conditions improve and allow for.

4. For the purpose of this Article, the term **new services** means a service that at the date of entry into force of this Agreement is:

- (a) not currently in existence in the territory of a Party; or
- (b) an existing service not covered or defined in the *United Nations Central Product Classification* ("CPC") and which is not subject to any regulatory framework in the territory of a Party owing to its infant stage of development as the Party concerned considers it to be as such.

### **Article 10.9: 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 ensure that its judicial, arbitral or administrative tribunals or procedures which provide for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in

services are open on a non-discriminatory basis to service suppliers of the other Party. 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. Paragraph 2 shall not be construed to require a Party to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.

4. Where authorisation is required for the supply of a service, the competent authorities of a Party shall promptly, 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.

5. With the objective of 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 jointly review the results of the negotiations on disciplines on these measures, pursuant to Article VI.4 of GATS, with a view to their incorporation into this Agreement. The Parties note that such disciplines aim to ensure that such requirements are *inter alia*:

- (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.

6. Pending the incorporation of disciplines pursuant to paragraph 5, a Party shall not apply licensing and qualification requirements and technical standards that nullify or impair its obligations under this Chapter in a manner which:

- (a) does not comply with the criteria outlined in paragraphs 5(a), (b) or (c); and
- (b) could not reasonably have been expected of that Party at the time the obligations were undertaken.

7. In determining whether a Party is in conformity with its obligations under paragraph 6, account shall be taken of international standards of relevant international organisations<sup>7</sup> applied by that Party.

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<sup>7</sup> The term "relevant international organisations" refers to international bodies whose membership is open to relevant bodies of both Parties.

8. Each Party shall provide for adequate procedures to verify the competence of professionals of the other Party.

#### **Article 10.10: Mutual Recognition**

1. For the purposes of fulfilling, 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 10.4 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 the education, experience, licenses, 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 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 10.11: 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 law 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, public retirement or compulsory savings schemes.

#### **Article 10.12: Denial of Benefits**

Subject to prior notification and consultation, according to the procedures set out in Article 15.3 (*Consultations*), 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 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 10.13: Transparency**

1. Each Party shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of this Chapter. International agreements which pertain to or affect cross-border trade in services to which a Party is a signatory shall also be published.

2. Where publication as referred to in paragraph 1 above is not practicable, such information shall be made otherwise publicly available.

3. Each Party shall respond promptly to all requests by the other Party for specific information on any of its measures of general application or international agreements within the meaning of paragraph 1 above. Each Party shall also establish one or more enquiry points to provide specific information to the other Party, upon request, on all such matters.

#### **Article 10.14: Monopolies and Exclusive Service Suppliers**

1. Each Party shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with its obligations under Articles 10.3, 10.4, 10.5 and 10.6.
2. Where a Party's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that Party's obligations under Articles 10.3, 10.4, 10.5 and 10.6., the Party shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such obligations.
3. If a Party has reason to believe that a monopoly supplier of a service of the other Party is acting in a manner inconsistent with paragraph 1 or 2, it may request the other Party establishing, maintaining or authorising such supplier to provide specific information concerning the relevant operations in its territory.
4. The provisions of this Article shall also apply to cases of exclusive service suppliers, where a Party, formally or in effect:
  - (a) authorises or establishes a small number of service suppliers; and
  - (b) substantially prevents competition among those suppliers in its territory.

#### **Article 10.15: Cooperation**

Both Parties shall encourage and facilitate, as appropriate:

- (a) public and private cooperation through the exchange of knowledge, experience and best practices in key industries so as to position them as leaders in their respective regions; and
- (b) promoting the use and development of their respective logistics services to facilitate international trade, including, where applicable, cooperating in the multilateral *fora* to ensure that countries with interests in logistics facilities are addressed.

## ANNEX 10A

### MOVEMENT OF BUSINESS PERSONS

#### Article 1: Scope

This Annex applies to measures affecting the movement of natural persons of a Party who enter the territory of the other Party for business purposes.

#### Article 2: Definitions

For the purposes of this Annex, the following definitions shall apply:

1. **immigration formality** means a visa, employment pass (in the case of Singapore), working permit (in the case of Panama) or other document or electronic authorisation granting a natural person of one Party the right to reside or work in the territory of the other Party;
2. **intra-corporate transferee** means an employee of a service supplier, enterprise of a Party or an investor of a Party as defined in Chapter 9 (*Investment*), who has been so employed for a period of not less than one year immediately preceding the date of the application for temporary entry, and who is:
  - (a) a manager, meaning a business person within an organisation who primarily directs the organisation or a department or sub-division of the organisation, supervises and controls the work of other supervisory, professional or managerial employees, has the authority to hire and fire or take other personnel actions (such as promotion or leave authorisation), and exercises discretionary authority over day-to-day operations. This does not include a first-line supervisor, unless the employees supervised are professionals, nor does this include an employee who primarily performs tasks necessary for the provision of the service or operation of an investment;
  - (b) an executive meaning a business person within an organisation who primarily directs the management of the organisation, exercises wide latitude in decision-making, and receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the business. An executive would not directly perform tasks related to the actual provision of the service or the operation of an investment; or
  - (c) a specialist meaning a business person within an organisation who possesses knowledge at an advanced level of expertise and who possesses proprietary knowledge of the organisation's service, research equipment, techniques, or management (a

specialist may include, but is not limited to, members of a licensed profession);

3. **temporary entry** means entry by an intra-corporate transferee, as the case may be, without the intent to establish permanent residence and for the purpose of engaging in activities which are clearly related to their respective business purposes.

### **Article 3: Intra-Corporate Transferees**

A Party shall grant temporary entry to an intra-corporate transferee of the other Party who otherwise meets its criteria for the grant of an immigration formality unless there has been a breach of any of the conditions governing temporary entry, or an application for an extension of an immigration formality has been refused on such grounds of national security or public order by the granting Party as it deems fit:

- (a) in the case of Singapore, for an initial period of up to two years which may be extended for periods of up to three years at a time for a total term not exceeding 8 years; and
- (b) in the case of Panama, for an initial period of up to two years which may be extended for periods of up to three years at a time for a total term not exceeding 8 years.

### **Article 4: Provision of Information**

A Party shall :

- (a) publish or otherwise make available to the other Party such information as will enable the other Party to become acquainted with its measures relating to this Annex; and
- (b) no later than six months after the date of entry into force of this Agreement, prepare, publish or otherwise make available in its own territory, and in the territory of the other Party, explanatory material regarding the requirements for temporary entry under this Annex in such a manner as will enable business persons of the other Party to become acquainted with them.

### **Article 5: Dispute Settlement**

1. A Party may not initiate proceedings under Chapter 15 (*Dispute Settlement*) regarding a refusal to grant temporary entry under this Annex unless:

- (a) the matter involves a pattern of practice; and

- (b) its natural persons affected have exhausted the available domestic administrative remedies regarding the particular matter.

2. The remedies referred to in paragraph 1(b) shall be deemed to be exhausted if a final determination in the matter has not been issued by the competent authority within one year of the institution of proceedings for domestic administrative remedies, including proceedings by way of review, and the failure to issue a determination is not attributable to delays caused by the natural person.

#### **Article 6: Expeditious Application Procedures**

A Party shall process expeditiously applications for immigration formalities from natural persons of the other Party, including further immigration formality requests or extensions thereof, particularly applications from members of professions for which mutual recognition arrangements have been concluded.

#### **Article 7: Notification of Outcome of Application**

A Party shall notify the applicants for temporary entry, either directly or through their prospective employers, of the outcome of their applications, including the period of stay and other conditions.

#### **Article 8: Online Lodgement and Processing**

Where possible, after the date of entry into force of this Agreement, the Parties shall provide facilities for online lodgement and processing:

- (a) in the case of Singapore, of employment passes which shall be applied for by the prospective employers; and
- (b) in the case of Panama, of working permits which shall be applied for by the prospective employers.

#### **Article 9: Resolution of Problems**

The relevant authorities of both Parties shall endeavour to favourably resolve any specific or general problems (within the framework of their domestic laws, regulations and other similar measures governing the temporary entry of natural persons), which may arise from the implementation and administration of this Annex.

**Article 10: Labour Market Testing**

Neither Party shall require labour market testing, labour certification tests or other procedures of similar effect as a condition for temporary entry in respect of natural persons on whom the benefits of this Annex are conferred.

## **ANNEX 10B**

### **MARITIME TRANSPORT SERVICES**

#### **Article 1: Scope**

This Annex applies to measures adopted or maintained by a Party affecting maritime transport services by maritime transport service suppliers of the other Party.

#### **Article 2: Taxes, Tariffs and Port Access Fees**

1. On a reciprocal basis, each Party shall afford vessels of the other Party the same treatment that it accords to its own vessels with respect to taxes assessed on tonnage or freight value and other taxes, port access fees and levies<sup>1</sup>.
2. Port services shall be made available to international maritime transport services suppliers of the Parties on reasonable and non-discriminatory terms and conditions<sup>2</sup>.
3. Vessels of a Party shall have the right to call at ports of the other Party, subject to advance notice requirements of such entry to the appropriate authorities of that Party. Nothing in this Agreement with respect to port access shall be construed to prevent either Party from taking actions necessary for the protection of its national security, safety or environmental interests.

#### **Article 3: Coastwise Transportation of Empty Vans, Tanks and Barges**

Notwithstanding any other provision of law or treaty, a vessel of a Party may transport the following goods between points embraced within the coastwise laws of either Party:

- (a) Empty cargo vans, empty lift vans, and empty shipping tanks; equipment for use with cargo vans, lift vans, or shipping tanks; empty barges specifically designed for carriage aboard a vessel and equipment, excluding propulsion equipment, for use with such barges; and empty instruments of international traffic, including containers, if such articles are owned or leased by the owner or operator of the transporting vessel and are transported for his use in handling his cargo in foreign trade; and

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<sup>1</sup> It is understood that such taxes, fees and levies correspond to those imposed on the basis of a jurisdictional exercise of a Party.

<sup>2</sup> Port Services such as: pilotage; towing and tug assistance; provisioning, fuelling and watering; garbage collecting and ballast waste disposal; port captain's services; navigation aids; shore-based operational services essential to ship operations, including communications, water and electrical supplies; emergency repair facilities; and anchorage, berth and berthing services.

- (b) Stevedoring equipment and material, if such equipment and material is owned or leased by the owner or operator of the transporting vessel, or is owned or leased by the stevedoring company contracting for the lading or unloading of that vessel, and is transported without charge for use in the handling of cargo in foreign trade.

#### **Article 4: International Maritime Transport and Feeder Services**

Transportation between a port of a Party and a port of the other Party is open. In addition, international maritime transport services suppliers of a Party can operate between ports of the other Party for the purposes of pre and onward carriage of their own international cargo.

#### **Article 5: Bilateral of Multilateral Agreements in Force**

A Party that is a party to an agreement or arrangement regarding maritime transport services, whether existing or in future, shall, upon a written request, afford adequate opportunity for the other Party, if that other Party is interested, to negotiate its accession to such an agreement or arrangement or to negotiate comparable ones with it.