

**CHAPTER 9**  
**CROSS-BORDER TRADE IN SERVICES**

**Article 9.1**  
**Definitions**

For the purposes of this Chapter:

**“aircraft repair and maintenance services”** means those activities when undertaken on an aircraft or a part thereof while the aircraft or part is withdrawn from service and does not include so-called line maintenance;

**“airport operation services”** means the operation or management, on a fee or contract basis, of airport infrastructure, including terminals, runways, taxiways and aprons, parking facilities, and intra-airport transportation systems. For greater certainty, airport operation services do not include the ownership of, or investment in, airports or airport lands, or any of the functions carried out by a board of directors. Airport operation services do not include air navigation services;

**“computer reservation system services”** means services provided by computerised 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 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 a covered investment;

**“enterprise”** means an enterprise as defined in Article 1.3 (General Definitions – Initial Provisions and General Definitions), or a branch of that enterprise;

**“enterprise of a Party”** means:

- (a) an enterprise constituted or organised under the law of that Party or a branch located in the territory of that Party, that carries out substantial business activities in the territory of that Party;<sup>1</sup> or

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<sup>1</sup> An enterprise shall be deemed to carry out substantial business activities in the territory of a Party if it has a genuine link to the economy of that Party. As to whether an enterprise has a genuine link

- (b) an enterprise of a non-party owned or controlled by a person of a Party,<sup>2</sup> if any of its vessels are registered in accordance with the laws and regulations of that Party and flying the flag of that Party, when supplying services using those vessels;

**“ground handling services”** means the supply, on a fee or contract basis, of the following services: airline representation, administration, and supervision, ground administration and supervision, including load control and communications; passenger handling; baggage handling; ramp services; air cargo and mail handling; fuel and oil handling; flight operations, crew administration and flight planning; aircraft servicing and cleaning; surface transport; and catering services. Ground handling services do not include: self-handling; security; line maintenance; fixed intra-airport transport systems; aircraft repair and maintenance; or the operation or management of essential centralised airport infrastructure, such as baggage handling systems, de-icing facilities, or fuel distribution systems;

**“measures of a Party”** means measures adopted or maintained by:

- (a) central, regional, or local governments or authorities; or
- (b) non-governmental bodies in the exercise of powers delegated by central, regional, or local governments or authorities;

**“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 or 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;

**“service supplier of a Party”** means a person of a Party that supplies, or seeks to supply, a service; and

**“specialty air services”** means a specialised commercial operation using an aircraft whose primary purpose is not the transportation of goods or passengers, such as aerial fire fighting, aerial advertising, flight training, sightseeing, spraying,

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to the economy of a Party, this should be established by an overall examination, on a case-by-case basis, of the relevant circumstances. These circumstances may include whether the enterprise:

- (a) has a continuous physical presence, including through ownership or rental of premises, in the territory of that Party;
- (b) has its central administration in the territory of that Party;
- (c) employs staff in the territory of that Party; and
- (d) generates turnover and pays taxes in the territory of that Party.

<sup>2</sup> For the avoidance of doubt, “person of a Party” in this subparagraph means a national or an “enterprise of a Party” as defined in subparagraph (a).

surveying, mapping, photography, parachute jumping, glider towing, helicopter-lift for logging and construction, and other airborne agricultural, industrial, and inspection services.

## **Article 9.2 Objectives**

The objectives of this Chapter are to:

- (a) facilitate the expansion of cross-border trade in services on a mutually advantageous basis;
- (b) improve the efficiency and transparency of the Parties' respective services sectors and competitiveness of their export trade; and
- (c) work toward progressive liberalisation,

while recognising the right of each Party to regulate and introduce new regulations, and to provide and fund public services, in a manner that gives due respect to government policy objectives.

## **Article 9.3 Scope**

1. This Chapter shall apply to measures of a Party affecting cross-border trade in services by service suppliers of the other Party. Those measures include measures affecting:
  - (a) the production, distribution, marketing, sale, or delivery of a service;
  - (b) the purchase or use of, or payment for, a service;
  - (c) the access to and use of, in connection with the supply of a service, services which are required by a Party to be offered to the public generally;
  - (d) the presence in a Party's 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. In addition to paragraph 1:

- (a) Annex 9A (Professional Services and Recognition of Professional Qualifications) shall also apply to measures of a Party affecting the supply of professional services, including by a covered investment;
  - (b) Annex 9B (Express Delivery Services) shall also apply to measures of a Party affecting the supply of express delivery services, including by a covered investment; and
  - (c) Annex 9C (International Maritime Transport Services) shall also apply to measures of a Party affecting the supply of international maritime transport services.
3. This Chapter shall not apply to:
- (a) financial services as defined in Article 11.1 (Definitions – Financial Services);
  - (b) government procurement;
  - (c) services supplied in the exercise of governmental authority;
  - (d) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance, except as provided for in Article 9.10 (Subsidies); or
  - (e) audio-visual services.
4. This Chapter shall not impose any obligation on a Party with respect to a national of the other Party who seeks access to its employment market or who is employed on a permanent basis in its territory, and does not confer any right on that national with respect to that access or employment.<sup>3</sup>
5. This Chapter shall not apply to air services, including domestic and international air transportation services, whether scheduled or non-scheduled, or to related services in support of air services, other than the following:
- (a) aircraft repair and maintenance services;
  - (b) the selling and marketing of air transport services;
  - (c) computer reservation system services;
  - (d) specialty air services;<sup>4</sup>

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<sup>3</sup> For greater certainty, this Chapter shall not apply to measures regarding citizenship, nationality, or residence on a permanent basis.

<sup>4</sup> Subject to compliance with the Parties' respective laws and regulations governing the admission of aircraft to, departure from, and operation within, their territory.

- (e) airport operation services; and
  - (f) ground handling services.
6. If the Annex on Air Transport Services of GATS is amended, the Parties shall conduct a review for the purpose of discussing appropriate amendments to this Agreement, in accordance with Article 33.3 (Amendments – Final Provisions).
7. In the event of any inconsistency between this Chapter and a bilateral, plurilateral, or multilateral air services agreement to which both Parties are party, the air services agreement shall prevail in determining the rights and obligations of the Parties.
8. If the Parties have the same obligations under this Agreement and a bilateral, plurilateral, or multilateral air services agreement, a Party may invoke the dispute settlement procedures of this Agreement only after any dispute settlement procedures in the other agreement have been exhausted.

#### **Article 9.4 Market Access**

Neither Party shall adopt or maintain, either on the basis of a regional sub-division or on the basis of its entire territory, a measure that:

- (a) imposes a limitation 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; or
  - (iii) the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;<sup>5</sup> or
- (b) restricts or requires a specific type of legal entity or joint venture through which a service supplier may supply a service.

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<sup>5</sup> Subparagraph (a)(iii) shall not cover measures of a Party which limit inputs for the supply of services.

**Article 9.5**  
**National Treatment**

1. Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords to its own like services and service suppliers.<sup>6</sup>
2. A Party may meet the requirement of paragraph 1 by according to services and service suppliers of the other Party, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.
3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Party compared to like services or service suppliers of the other Party.

**Article 9.6**  
**Most-Favoured-Nation Treatment**

Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords to like services and service suppliers of a non-party.<sup>7</sup>

**Article 9.7**  
**Local Presence**

Neither Party shall 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 9.8**  
**Non-Conforming Measures**

1. Articles 9.4 (Market Access) to Article 9.7 (Local Presence) shall not apply to:
  - (a) any existing non-conforming measure that is maintained by a Party at:

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<sup>6</sup> Obligations 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.

<sup>7</sup> For greater certainty, this paragraph does not cover treatment accorded by the United Kingdom to services and service suppliers of territories for whose international relations the United Kingdom is responsible.

- (i) the central or regional level of government, as set out by that Party in its Schedule to Annex I (Cross-Border Trade in Services and Investment Non-Conforming Measures); or
    - (ii) a local 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 9.4 (Market Access) to Article 9.7 (Local Presence).
2. Articles 9.4 (Market Access) to Article 9.7 (Local Presence) shall not apply to any measure of a Party with respect to sectors, sub-sectors, or activities, as set out by that Party in its Schedule to Annex II (Cross-Border Trade in Services and Investment Non-Conforming Measures).

### **Article 9.9**

#### **Payments and Transfers**

1. Each Party shall permit all transfers and payments that relate 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 transfers and payments that relate to the cross-border supply of services to be made in a freely usable currency at the market rate of exchange that prevails 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 law that relates to:
  - (a) bankruptcy, insolvency, or the protection of the rights of creditors;
  - (b) issuing, trading, or dealing in securities, futures, or derivatives;
  - (c) criminal or penal offences;
  - (d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;
  - (e) ensuring compliance with orders or judgments in judicial or administrative proceedings; or

- (f) social security, public retirement, or compulsory savings schemes.

#### **Article 9.10 Subsidies**

Notwithstanding subparagraph 3(d) of Article 9.3 (Scope):

- (a) the Parties shall review the issue of disciplines on subsidies related to cross-border trade in services in the light of any disciplines agreed under Article XV of GATS, with a view to the incorporation of those disciplines into this Agreement, in accordance with Article 33.3 (Amendments – Final Provisions); and
- (b) a Party which considers that it is adversely affected by a subsidy of the other Party related to cross-border trade in services may request consultations on those matters. The Parties shall subsequently enter into such consultations.

#### **Article 9.11 Denial of Benefits**

A Party may deny the benefits of this Chapter to a service supplier of the other Party that is an enterprise of that Party and to services of that service supplier if:

- (a) a non-party or a person of a non-party owns or controls the enterprise; and
- (b) the denying Party adopts or maintains a measure with respect to the non-party or the person of the non-party which prohibits transactions with the enterprise or which would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to services of that enterprise.

#### **Article 9.12 Recognition**

1. For the purposes of the fulfilment, in whole or in part, of a Party's standards or criteria for the authorisation, licensing, or certification of service suppliers, and subject to the requirements of paragraph 4, the Party may recognise the education or experience obtained, requirements met, or licences or certifications granted, in the territory of a non-party. That recognition, which may be achieved through harmonisation or otherwise, may be based on an



agreement or arrangement with the non-party concerned, or may be accorded autonomously.

2. If 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 9.6 (Most-Favoured-Nation Treatment) shall be construed to require the Party to accord recognition to the education or experience obtained, requirements met, or licences or certifications granted, in the territory of the other Party.
3. If a Party is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, the Party shall afford adequate opportunity to the other Party, on request, to negotiate its accession to that agreement or arrangement, or to negotiate a comparable agreement or arrangement. If a Party accords recognition of the type referred to in paragraph 1 autonomously, the Party shall afford adequate opportunity to the other Party to demonstrate that education or experience obtained, requirements met, or licences or certifications granted in that other Party's territory should be recognised.
4. Neither Party shall accord recognition in a manner that would constitute a means of discrimination between the other Party and a non-party 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 9.13 Development Cooperation**

1. Recognising the role that trade in services can play in economic development and poverty reduction, the Parties may engage in cooperative activities to support the participation of developing countries in trade in services.
2. Cooperative activities may include:
  - (a) participating actively in international fora in order to support the participation of developing countries in trade in services;
  - (b) sharing information and experiences and identifying best practices relevant to supporting that participation of developing countries in trade in services; and
  - (c) any other form of cooperation or activities as may be agreed between the Parties.

**Article 9.14**  
**Services and Investment Sub-Committee**

1. The Services and Investment Sub-Committee, established under Article 30.9 (Sub-Committees – Institutional Provisions), shall be composed of government representatives of each Party.
2. The Sub-Committee shall:
  - (a) review and monitor the implementation and operation of this Chapter and Chapters 10 (Domestic Regulation) to Chapter 15 (Digital Trade);
  - (b) consider ways to further enhance trade and investment between the Parties, including through discussing future amendments to each Party’s Schedules to Annex I (Cross-Border Trade in Services and Investment Non-Conforming Measures), Annex II (Cross-Border Trade in Services and Investment Non-Conforming Measures), Annex III (Financial Services Non-Conforming Measures), and Annex 13A (Schedule of Commitments for Temporary Entry of Business Persons); and
  - (c) facilitate the exchange of information between the Parties in relation to the Chapters referred to in subparagraph (a).
3. The Sub-Committee may:
  - (a) make recommendations, or refer matters, to the Joint Committee;
  - (b) refer matters to any working group or any other subsidiary body related to the Chapters referred to in subparagraph 2(a); and
  - (c) consider any other matter related to the Chapters referred to in subparagraph 2(a), including matters referred to it by any working group or any other subsidiary body, or as directed by the Joint Committee.
4. The Sub-Committee shall meet one year after the date of entry into force of this Agreement, and thereafter as agreed by the Parties.
5. The Sub-Committee shall be co-chaired by representatives of each Party and hosted alternatively.
6. The Sub-committee shall report to the Joint Committee with respect to its activities.
7. All decisions and reports of the Sub-Committee shall be made by mutual agreement.