

CHAPTER 11

CROSS-BORDER TRADE IN SERVICES

Article 11.1

[EU: Objectives

The Parties, reaffirming their respective commitments under the WTO Agreement and their commitment to create a better climate for the development of trade between them, hereby lay down the necessary arrangements for the progressive reciprocal liberalisation of trade in services.]

Article 11.2

Right to Regulate

The Parties reaffirm the right to regulate within their territories to achieve legitimate policy objectives, such as the protection of public health, social services, education, safety, environment, including climate change, or public morals, social or consumer protection, privacy and data protection or the promotion and protection of cultural diversity.

Article 11.3

Definitions

For the purposes of this Chapter:

aircraft repair and maintenance services during which an aircraft is withdrawn from service means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance;

computer reservation system (CRS) 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 the service consumer of the other Party

ground handling services means the supply at an airport, on a fee or contract basis, of the following services: airline representation, administration and supervision; passenger handling; baggage handling; ramp services; catering, except the preparation of the food; air

cargo and mail handling; fuelling of an aircraft; aircraft servicing and cleaning; surface transport; and flight operations, crew administration and flight planning.

Ground handling services do not include: self-handling; security; line maintenance; aircraft repair and maintenance; or management or operation of essential centralised airport infrastructure, such as de-icing facilities, fuel distribution systems, baggage handling systems and fixed intra-airport transport systems;

juridical person means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;

juridical person of a Party means¹:

(i) for the European Union:

A a juridical person constituted or organised under the law of the European Union or of at least one of its Member States and engaged in substantive business operations² in the territory of the European Union; and

B shipping companies established outside the European Union, and controlled by natural persons of a Member State of the European Union, whose vessels are registered in, and fly the flag of, a Member State of the European Union.

(ii) for Chile:

A a juridical person constituted or organised under the law of Chile and engaged in substantive business operations in the territory of Chile; and

B shipping companies established outside Chile, and controlled by natural persons of Chile, whose vessels are registered in, and fly the flag of, Chile.

natural person of the EU means a national of one of the Member States of the European Union according to its legislation³

natural person of Chile means a Chilean as defined in Article 10 of the Political Constitution of the Republic of Chile;

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;

¹ For greater certainty, the shipping companies mentioned in this definition are only considered as juridical persons of a Party with respect to their activities relating to the supply of maritime transport services.

² In line with its notification of the Treaty establishing the European Community to the WTO (WT/REG39/1), the European Union understands that the concept of "effective and continuous link" with the economy of a Member State of the European Union enshrined in Article 54 of the TFEU is equivalent to the concept of "substantive business operations".

³ The definition of natural person also includes natural persons permanently residing in the Republic of Latvia who are not citizens of the Republic of Latvia or any other state but who are entitled, under laws and regulations of the Republic of Latvia, to receive a non-citizen's passport.

service includes any service in any sector but not services supplied in the exercise of governmental authority;

service supplier of a Party means any natural or juridical person of a Party that seeks to supply or supplies a service;

[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 11.4

Scope

1. This Chapter shall apply to measures of a Party affecting cross-border trade in services supplied by service suppliers of the other Party. Such measures include those that affect:

- (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, in connection with the supply of a service services which are required by a Party to be offered to the public generally, including distribution, transport or telecommunications networks;
- (d) the provision of a bond or other form of financial security, as a condition for the supply of a service.

2. This Title\Chapter applies to measures adopted or maintained by:

- (a) governments and authorities at all levels;
- (b) non-governmental bodies in the exercise of powers delegated by governments or authorities at all levels.
- (c) any entity which is in fact acting on the instructions of or under the direction or the control of a Party with regard to the measure.⁴

3. This Chapter shall not apply to:

- (a) financial services, as defined in Article X.1 (Chapter XX Financial Services - Definitions);
- (b) audio-visual services;

⁴ For greater certainty, if a Party claims that an entity is acting as referred to in subparagraph 2 (c), such Party bears the burden of proof and at least must provide solid indicia.

- (c) national maritime cabotage⁵;
- (d) Domestic and international air services⁶, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than:
 - (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;
 - (ii) the selling and marketing of air transport services;
 - (iii) computer reservation system (CRS) services; and
 - (iv) ground handling services.
- (e) government procurement, [as defined in Article 21.1 (Chapter 21 Government Procurement Definitions);] and
- (f) subsidies or grants provided by a Party or a state-owned enterprise including government-supported loans, guarantees and insurance.

Article 11.5

National Treatment

1. Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords in like situations, to its own services and service suppliers.
2. The treatment accorded by a Party under paragraphs 1 means:
 - (a) with respect to a regional or local level of government of Chile, treatment no less favourable than the most favourable treatment accorded, in like situations, by that level of government to its own services and service suppliers of Chile.
 - (b) with respect to a government of, or in, a Member State of the European Union, treatment no less favourable than the most favourable treatment accorded, in like situations, by that government to its own services and service suppliers.

⁵ Without prejudice to the scope of activities which may be considered as cabotage under the relevant national legislation, national maritime cabotage under this Chapter covers transportation of passengers or goods between a port or point located in Chile or a Member State of the European Union and another port or point located in Chile or that same Member State of the European Union, including on its continental shelf, as provided in the UN Convention on the Law of the Sea, and traffic originating and terminating in the same port or point located in Chile or a Member State of the European Union.

⁶ For greater certainty, Air services or related services in support of air services include, but are not limited to, the following services: air transportation; services provided by using an aircraft whose primary purpose is not the transportation of goods or passengers, such as aerial fire-fighting flight training, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, helicopter-lift for logging and construction, and other airborne agricultural, industrial and inspection services; the rental of aircraft with crew; and airport operation services.

3. 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 services and service suppliers.
4. 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 service suppliers of the other Party.
5. Nothing in this Article shall be construed to require any Party to compensate for inherent competitive disadvantages which result from the foreign character of the relevant services or services suppliers.

Article 11.6

Most-Favoured-Nation Treatment

1. Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords, in like situations, to services and service suppliers of a non-Party state.
2. Paragraph 1 shall not be construed as obliging a Party to extend to services and service suppliers of the other Party the benefit of any treatment resulting from:
 - (a) an international agreement for the avoidance of double taxation or other international agreement or arrangement relating wholly or mainly to taxation; or
 - (b) measures providing for recognition, including of the standards or criteria for the authorisation, licencing, or certification of a natural person or enterprise to carry out an economic activity, or of prudential measures.
3. For greater certainty the “treatment” referred to in paragraphs 1 and 2 does not include investment dispute resolution procedures or mechanisms provided for in other international investment treaties and other trade agreements. The substantive provisions in other international or trade agreements do not in themselves constitute “treatment” as referred to in paragraphs 1 and 2, and thus cannot give rise to a breach of this Article, absent measures adopted or maintained by a Party. Measures applied pursuant to such substantive provisions may constitute “treatment” under this Article.

[DN: We should copy mutatis mutandi the investment provision]

Article 11.7

Local Presence

A Party shall not require a service supplier of the other Party to establish or maintain an enterprise or to be resident in its territory as a condition for the cross-border supply of a service.

Article 11.8

Market Access

In sectors or subsectors where market access commitments are undertaken, 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 test⁷; 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 11.9

Non-Conforming Measures

1. Articles 11.5 (National Treatment), 11.6 (Most-Favoured-Nation Treatment) and 11.7 (Local Presence) shall not apply to:

- (a) any existing non-conforming measure that is maintained by a Party at the level of:
 - (i) the European Union, as set out in its Annex I;
 - (ii) a national government, as set out by that Party in its Annex I;
 - (iii) regional government, as set out by that Party in its Annex I; or

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

- (iv) a local government.
 - (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
 - (d) 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 11.5 (National Treatment), 11.6 (Most-Favoured-Nation Treatment) and 11.7 (Local Presence).
2. Articles 11.5 (National Treatment), 11.6 (Most-Favoured-Nation Treatment) and 11.7 (Local Presence) shall 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 11.8 (Market Access) shall not apply to any measure that a Party adopts or maintains with respect to committed sectors or subsectors as set out in its Annex III.

Article 11.10

Denial of Benefits

A Party may deny the benefits of this Chapter to an economic operator of the other Party or to a covered enterprise if the denying Party adopts or maintains measures related to the maintenance of international peace and security, including the protection of human rights, which:

- a. prohibit transactions with that economic operator or covered enterprise, or with a natural or juridical person who owns or controls either of them, or
- b. would be violated or circumvented if the benefits of this Chapter were accorded to that economic operator or covered enterprise.