

## CHAPTER 15

### CROSS-BORDER TRADE IN SERVICES

#### Article 15.1: 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 a Party into the territory of another Party;
- (b) in the territory of a Party by a person of that Party to a person of another Party; or
- (c) by a national of a Party in the territory of another 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 1.4 (General Definitions), or a branch of an enterprise;

**professional service** means a service, the supply 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 a service provided by a tradesperson, or a vessel or aircraft crew member;

**service supplied in the exercise of governmental authority** means, for a Party, a service that is supplied neither on a commercial basis nor in competition with one or more service suppliers;

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

**specialty air service** means a specialized commercial operation 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, and helicopter-lift for logging and construction, and other airborne agricultural, industrial, and inspection services.

## Article 15.2: Scope

1. This Chapter applies to measures adopted or maintained by a Party relating to cross-border trade in services by a service supplier of another Party, including a measure relating to:
  - (a) the production, distribution, marketing, sale or delivery of a service;<sup>1</sup>
  - (b) the purchase or use of, or payment for, a service;<sup>2</sup>
  - (c) the access to or use of distribution, transport, or telecommunications networks or services in connection with the supply of a service;
  - (d) the presence in the Party's territory of a service supplier of another Party; or
  - (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) Article 15.5 (Market Access) and Article 15.8 (Development and Administration of Measures) apply to measures adopted or maintained by a Party relating to the supply of a service in its territory by a covered investment; and
  - (b) Annex 15-A (Delivery Services) applies to measures adopted or maintained by a Party relating to the supply of delivery services, including by a covered investment.
3. This Chapter does not apply to:
  - (a) a financial service as defined in Article 17.1 (Definitions), except that paragraph 2(a) applies if the financial service is supplied by a covered investment that is not a covered investment in a financial institution as defined in Article 17.1 (Definitions) in the Party's territory;
  - (b) government procurement;
  - (c) a service supplied in the exercise of governmental authority; or
  - (d) a subsidy or grant provided by a Party or a state enterprise, including government-supported loans, guarantees, or insurance.

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<sup>1</sup> For greater certainty, subparagraph (a) includes the production, distribution, marketing, sale or delivery of a service by electronic means.

<sup>2</sup> For greater certainty, subparagraph (b) includes the purchase or use of, or payment for, a service by electronic means.

4. This Chapter does 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 or maintenance services during which an aircraft is withdrawn from service, excluding so-called line maintenance; and
- (b) specialty air services.

5. This Chapter does not impose an obligation on a Party with respect to a national of another 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.

6. Annex 15-B (Committee on Transportation Services) and Annex 15-D (Programming Services) include additional provisions related to this Chapter.

### **Article 15.3: National Treatment**

1. Each Party shall accord to services or service suppliers of another Party treatment no less favorable than that it accords, in like circumstances, to its own services and service suppliers.

2. The treatment to be accorded by a Party under paragraph 1 means, with respect to a government other than at the central level, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that government to services and service suppliers of the Party of which it forms a part.

3. For greater certainty, whether treatment referred to in paragraph 1 is accorded in “like circumstances” depends on the totality of the circumstances, including whether the relevant treatment distinguishes between services or service suppliers on the basis of legitimate public welfare objectives.

### **Article 15.4: Most-Favored-Nation Treatment**

1. Each Party shall accord to services or service suppliers of another Party treatment no less favorable than that it accords, in like circumstances, to services and service suppliers of another Party or a non-Party.

2. The treatment to be accorded by a Party under paragraph 1 means, with respect to a government other than at the central level, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that government to services and service suppliers of another Party or a non-Party.

3. For greater certainty, whether treatment referred to in paragraph 1 is accorded in “like circumstances” depends on the totality of the circumstances, including whether the relevant treatment distinguishes between services or services suppliers on the basis of legitimate public welfare objectives.

#### **Article 15.5: Market Access**

1. No Party shall adopt or maintain, either on the basis of a regional subdivision 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 a numerical quota, monopoly, exclusive service suppliers, or the requirement of an economic needs test,
  - (ii) the total value of service transactions or assets in the form of a numerical quota or the requirement of an economic needs test,
  - (iii) the total number of service operations or the total quantity of service output expressed in terms of a designated numerical unit in the form of a quota or the requirement of an economic needs test,<sup>3</sup> 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 a numerical quota or the requirement of an economic needs test; or
- (b) restricts or requires a specific type of legal entity or joint venture through which a service supplier may supply a service.

#### **Article 15.6: Local Presence**

No Party shall require a service supplier of another Party to establish or maintain a representative office or an enterprise, or to be resident, in its territory as a condition for the cross-border supply of a service.

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<sup>3</sup> Subparagraph (a)(iii) does not cover measures of a Party which limit inputs for the supply of services.

## **Article 15.7: Non-Conforming Measures**

1. Article 15.3 (National Treatment), Article 15.4 (Most-Favored-Nation Treatment), Article 15.5 (Market Access), and Article 15.6 (Local Presence) do not apply to:

- (a) an 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 I,
  - (ii) a regional level of government, as set out by that Party in its Schedule to Annex I, or
  - (iii) a local level of government;
- (b) the continuation or prompt renewal of a non-conforming measure referred to in subparagraph (a); or
- (c) an amendment to a 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 Article 15.3 (National Treatment), Article 15.4 (Most-Favored-Nation Treatment), Article 15.5 (Market Access), or Article 15.6 (Local Presence).

2. Article 15.3 (National Treatment), Article 15.4 (Most-Favored-Nation Treatment), Article 15.5 (Market Access), and Article 15.6 (Local Presence) do not apply to a measure that a Party adopts or maintains with respect to sectors, sub-sectors or activities, as set out by that Party in its Schedule to Annex II.

3. If a Party considers that a non-conforming measure applied by a regional level of government of another Party, as referred to in sub-paragraph 1(a)(ii), creates a material impediment to the cross-border supply of services in relation to the former Party, it may request consultations with regard to that measure. These Parties shall enter into consultations with a view to exchanging information on the operation of the measure and to considering whether further steps are necessary and appropriate.

4. For greater certainty, a Party may request consultations with another Party regarding non-conforming measures applied by the central level of government, as referred to in subparagraph 1(a)(i).

## **Article 15.8: Development and Administration of Measures**

1. Each Party shall ensure that a measure of general application affecting trade in services is administered in a reasonable, objective, and impartial manner.
2. If a Party adopts or maintains a measure relating to licensing requirements and procedures, or qualification requirements and procedures, affecting trade in services, the Party shall, with respect to that measure:
  - (a) ensure that the requirement or procedure is based on criteria that are objective and transparent. For greater certainty, these criteria may include competence or ability to supply a service, or potential health or environmental impacts of an authorization, and competent authorities may assess the weight given to such criteria;
  - (b) ensure that the competent authority reaches and administers a decision in an independent manner;
  - (c) ensure that the procedure does not in itself prevent fulfilment of a requirement; and
  - (d) to the extent practicable, avoid requiring an applicant to approach more than one competent authority for each application for authorization.<sup>4</sup>
3. If a Party requires an authorization for the supply of a service, it shall ensure that each of its competent authorities:
  - (a) to the extent practicable, permits an applicant to submit an application at any time;
  - (b) if a specific time period for applications exists, allows a reasonable period for the submission of an application;
  - (c) if an examination is required, schedules the examination at reasonably frequent intervals and provides a reasonable period of time to enable an applicant to request to take the examination;
  - (d) endeavors to accept an application electronically;
  - (e) to the extent practicable, provides an indicative timeframe for processing an application;

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<sup>4</sup> For greater certainty, a Party may require multiple applications for authorization if a service is within the jurisdiction of multiple competent authorities.

- (f) to the extent practicable, ascertains without undue delay the completeness of an application for processing under the Party's law;
- (g) accepts copies of documents that are authenticated in accordance with the Party's law, in place of original documents, unless the competent authority requires original documents to protect the integrity of the authorization process;
- (h) at the request of the applicant, provides without undue delay information concerning the status of the application;
- (i) if an application is considered complete under the Party's law, within a reasonable period of time after the submission of the application, ensures that the processing of the application is completed, and that the applicant is informed of the decision concerning the application, to the extent possible in writing;<sup>5</sup>
- (j) if an application is considered incomplete for processing under the Party's law, within a reasonable period of time, to the extent practicable:
  - (i) informs the applicant that the application is incomplete,
  - (ii) if the applicant requests, provides guidance on why the application is considered incomplete,
  - (iii) provides the applicant with an opportunity<sup>6</sup> to provide the additional information that is required for the application to be considered complete, and

if none of the above is practicable, and the application is rejected due to incompleteness, ensures that the applicant is informed of the rejection within a reasonable period of time;
- (k) if an application is rejected, to the extent possible, either upon its own initiative or upon the request of the applicant, informs the applicant of the reasons for rejection and, if applicable, the timeframe for an appeal or review of the decision to reject the application and the procedures for resubmission of an application; and

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<sup>5</sup> A competent authority can meet this requirement by informing an applicant in advance in writing, including through a published measure, that lack of response after a specified period of time from the date of submission of the application indicates either acceptance or rejection of the application. For greater certainty, "in writing" includes in electronic form.

<sup>6</sup> For greater certainty, providing this opportunity does not require a competent authority to provide extensions of deadlines.

- (1) ensures that authorization, once granted, enters into effect without undue delay, subject to the applicable terms and conditions.

4. Each Party shall ensure that any authorization fee charged by any of its competent authorities is reasonable, transparent, and does not, in itself, restrict the supply of the relevant service. For the purposes of this paragraph, an authorization fee does not include a fee for the use of natural resources, payments for auction, tendering, or other non-discriminatory means of awarding concessions, or mandated contributions to the provision of universal service.

5. Each Party shall encourage its competent authorities, when adopting a technical standard, to adopt technical standards developed through an open and transparent process, and shall encourage a body designated to develop a technical standard to use an open and transparent process.

6. If a Party requires authorization for the supply of a service, the Party shall provide to a service supplier or person seeking to supply a service the information necessary to comply with requirements or procedures for obtaining, maintaining, amending, and renewing that authorization. That information must include:

- (a) any fee;
- (b) the contact information of a relevant competent authority;
- (c) any procedure for appeal or review of a decision concerning an application;
- (d) any procedure for monitoring or enforcing compliance with the terms and conditions of licenses;
- (e) any opportunities for public involvement, such as through hearings or comments;
- (f) any indicative timeframe for processing of an application;
- (g) any requirement or procedure; and
- (h) any technical standard.

7. Paragraphs 1 through 6 do not apply to the aspects of a measure set out in an entry to a Party's Schedule to Annex I, or to a measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities as set out by that Party in its Schedule to Annex II.

## **Article 15.9: Recognition**

1. For the purposes of the fulfilment, in whole or in part, of a Party's standards or criteria for the authorization, licensing, or certification of a service supplier, and subject to the requirements of paragraph 4, a Party may recognize any education or experience obtained, requirements met, or licenses or certifications granted, in the territory of another Party or a non-Party. That recognition, which may be achieved through harmonization or otherwise, may be based on an agreement or arrangement with the Party or non-Party concerned, or may be accorded autonomously.
2. If 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 another Party or a non-Party, Article 15.4 (Most-Favored-Nation Treatment) does not require the Party to accord recognition to the education or experience obtained, requirements met, or licenses or certifications granted, in the territory of another 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 another 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 another Party to demonstrate that education or experience obtained, requirements met, or licenses or certifications granted, in that other Party's territory should be recognized.
4. A Party shall not accord recognition in a manner that would constitute a means of discrimination between Parties or between a Party and a non-Party in the application of its standards or criteria for the authorization, licensing, or certification of a service supplier, or a disguised restriction on trade in services.
5. The Parties shall endeavor to facilitate trade in professional services as set out in Annex 15-C (Professional Services).

## **Article 15.10: Small and Medium-Sized Enterprises**

1. With a view to enhancing commercial opportunities in services for SMEs, and further to Chapter 25 (Small and Medium-Sized Enterprises), each Party shall endeavor to support the development of SME trade in services and SME-enabling business models, such as direct selling services,<sup>7</sup> including through measures that facilitate SME access to resources or protect individuals from fraudulent practices.

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<sup>7</sup> Direct selling is the retail distribution of goods by an independent sales representative, and for which the representative is compensated based exclusively on the value of goods sold either by the representative or additional representatives recruited, trained, or otherwise supported by the representative. These goods include any product that may be distributed by other retail distribution service suppliers without a prescription or other special authorization, and may include food products, such as food and nutritional supplements in tablet, powder, or liquid capsule form;

2. Further to Chapter 28 (Good Regulatory Practices), each Party shall endeavor to adopt or maintain appropriate mechanisms that consider the effects of regulatory actions on SME service suppliers and that enable small businesses to participate in regulatory policy development.

3. Further to Article 15.8 (Development and Administration of Measures), each Party shall endeavor to ensure that authorization procedures for a service sector do not impose disproportionate burdens on SMEs.

#### **Article 15.11: Denial of Benefits**

1. A Party may deny the benefits of this Chapter to a service supplier of another Party if the service supplier is an enterprise owned or controlled by a person of a non-Party, and the denying Party adopts or maintains a measure with respect to the non-Party or a person of the non-Party that prohibits a transaction with that enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to that enterprise.

2. A Party may deny the benefits of this Chapter to a service supplier of another Party if the service supplier is an enterprise owned or controlled by a person of a non-Party, or by a person of the denying Party, that has no substantial business activities in the territory of any Party other than the denying Party.

#### **Article 15.12: 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 laws that relate to:

- (a) bankruptcy, insolvency, or the protection of the rights of creditors;
- (b) issuing, trading, or dealing in securities or derivatives;

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cosmetics; common consumer products for which medical expertise is not required, such as cotton swabs; and other hygiene and cleaning products. The term “nutritional supplement” applies to all health-maintenance products not intended to cure or treat a disease, and that are sold without prescription or other special authorization.

- (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.

4. For greater certainty, this Article does not preclude the equitable, non-discriminatory, and good faith application of a Party's laws relating to its social security, public retirement, or compulsory savings programs.

## ANNEX 15-A

### DELIVERY SERVICES

1. For the purposes of this Annex:

**delivery services** means the collection, sorting, transport, and delivery of documents, printed matter, parcels, goods, or other items;

**postal monopoly** means the exclusive right accorded to an operator within a Party's territory to supply specified delivery services pursuant to a measure of the Party; and

**universal service** means a delivery service that is made available to all users in a designated territory in accordance with standards of price and quality as defined by each Party.

2. For greater certainty, this Annex does not apply to maritime, internal waterway, air, rail, or road transportation services, including cabotage.

3. Each Party that maintains a postal monopoly shall define the scope of the monopoly on the basis of objective criteria, including quantitative criteria such as price or weight thresholds.

4. For greater certainty, each Party has the right to define the kind of universal service obligation it wishes to adopt or maintain. Each Party that maintains a universal service obligation shall administer it in a transparent, non-discriminatory, and impartial manner with regard to all service suppliers subject to the obligation.

5. No Party shall allow a supplier of a delivery service covered by a postal monopoly to:

- (a) use revenues derived from the supply of such services to cross-subsidize the supply of a delivery service not covered by a postal monopoly;<sup>8</sup> or
- (b) unjustifiably differentiate among mailers in like circumstances or consolidators in like circumstances with respect to tariffs or other terms and conditions for the supply of a delivery service covered by a postal monopoly.

6. Each Party shall ensure that a supplier of services covered by a postal monopoly does not abuse its monopoly position to act in the Party's territory in a manner inconsistent with the Party's

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<sup>8</sup> A Party shall be deemed in compliance with this paragraph if an independent audit (which, for greater certainty, means for the United States a finding by the Postal Regulatory Commission) determines on an annual basis that the Party's supplier of a delivery service covered by a postal monopoly has not used revenues derived from that monopoly to cross-subsidize its delivery services not covered by a postal monopoly. For greater certainty, this paragraph does not require a Party to ensure that a supplier of a delivery service covered by a postal monopoly maintain accounts in a sufficiently detailed manner to show the costs and revenues of each of its delivery services.

commitments under Article 14.4 (National Treatment), Article 15.3 (National Treatment), or Article 15.5 (Market Access) with respect to the supply of delivery services outside of the postal monopoly.

7. No Party shall:

- (a) require the supply of a delivery service on a universal basis as a condition for an authorization or license to supply a delivery service not covered by a postal monopoly; or
- (b) assess fees or other charges exclusively on the supply of any delivery service that is not a universal service for the purpose of funding the supply of a universal service.

8. Each Party shall ensure that the authority primarily responsible for regulating delivery services is not accountable to any supplier of delivery services, and that the decisions and procedures that the authority adopts are impartial, non-discriminatory, and transparent with respect to all delivery services not covered by a postal monopoly in its territory.<sup>9</sup>

9. No Party may require a supplier of a delivery service not covered by a postal monopoly to contract, or prevent such a supplier from contracting, with another service supplier to supply a segment of the delivery service.

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<sup>9</sup> For greater certainty, and for the purposes of this paragraph, an “authority responsible for regulating delivery services” does not mean a customs administration.

## **ANNEX 15-B**

### **COMMITTEE ON TRANSPORTATION SERVICES**

1. The Parties hereby establish a Committee on Transportation Services (Transportation Services Committee) composed of government representatives of the relevant trade and transport-related national authorities of each Party. Each Party shall designate contact points for the Transportation Services Committee in accordance with Article 30.5 (Agreement Coordinator and Contact Points).
2. The Transportation Services Committee shall discuss issues as the Parties may decide that may arise from the implementation and operation of the Parties' obligations related to transportation services in Chapters 14 (Investment) and 15 (Cross-Border Trade in Services), among others, as appropriate.
3. The Transportation Services Committee may invite, as appropriate, representatives of other relevant entities and representatives of the private sector to attend meetings of the Committee and report to the Committee on discussions by these representatives.
4. The Transportation Services Committee shall take into consideration the discussions and outcomes related to the Committee from other fora in which the Parties participate in order to avoid duplication, and, as appropriate, incorporate those discussions and outcomes in the discussions of the Committee.
5. The Transportation Services Committee shall endeavor to meet within one year of the date of entry into force of this Agreement, and thereafter as necessary, at such venues, format, and times as the Parties may decide.
6. The Transportation Services Committee shall, as appropriate, report to the Commission activities undertaken by the Parties pursuant to this Annex.

## ANNEX 15-C

### PROFESSIONAL SERVICES

1. Each Party shall consult with relevant bodies in its territory to seek to identify professional services where at least two of the Parties are mutually interested in establishing a dialogue on issues that relate to the recognition of professional qualifications, licensing, or registration.
2. If a professional service described in Paragraph 1 is identified, each Party shall encourage its relevant bodies to establish dialogues with the relevant bodies of the other Parties, with a view to facilitating trade in professional services. The dialogues may consider, as appropriate:
  - (a) recognition of professional qualifications and facilitating licensing and registration procedures through mutual recognition agreements;
  - (b) autonomous recognition of the education or experience obtained by a candidate in the territory of another Party, for the purposes of fulfilling some or all of the licensing or examination requirements of that profession;
  - (c) the development of mutually acceptable standards and criteria for authorization of professional service suppliers from the territory of the other Party;
  - (d) temporary or project-specific licensing or registration based on a foreign supplier's home license or recognized professional body membership, without the need for further written examination;
  - (e) the form of association and procedures whereby a foreign-licensed supplier may work in association with a professional service supplier of the Party; or
  - (f) any other approaches to facilitate authorization to provide services by professionals licensed in another Party.
3. Each Party shall encourage its relevant bodies to take into account agreements that relate to professional services in the development of agreements on the recognition of professional qualifications, licensing, and registration.
4. Further to any dialogue referred to in paragraphs 2(a) through 2(f), each Party shall encourage its respective relevant bodies, as appropriate, to consider undertaking related activity within a mutually agreed time.

5. If relevant bodies enter into discussions under paragraph 2(a) for the purpose of creating a Mutual Recognition Agreement, those discussions may be guided by Appendix 1 for the negotiation of such an agreement.
6. The Parties hereby establish a Professional Services Working Group (Professional Services Working Group), composed of representatives of each Party.
7. The Professional Services Working Group shall liaise, as appropriate, to support the Parties' relevant bodies in pursuing the activities listed in paragraph 2. This support may include providing points of contact, facilitating meetings, and providing information regarding regulation of professional services in the Parties' territories.
8. The Professional Services Working Group shall meet within one year of the date of entry into force of this Agreement, and thereafter as decided by the Parties, to discuss activities covered by this Annex.
9. The Professional Services Working Group shall, as appropriate, report to the Commission activities undertaken by the Parties pursuant to this Annex.

## **APPENDIX 1**

### **GUIDELINES FOR MUTUAL RECOGNITION AGREEMENTS OR ARRANGEMENTS FOR THE PROFESSIONAL SERVICES SECTOR**

#### **Introductory Notes**

This Appendix provides practical guidance for governments, negotiating entities or other entities entering into mutual recognition negotiations for the professional services sector. These guidelines are non-binding and are intended to be used by the Parties on a voluntary basis. They do not modify or affect the rights and obligations of the Parties under this Agreement.

The objective of these guidelines is to facilitate the negotiation of mutual recognition agreements or arrangements (MRAs).

The examples listed under this Appendix are provided by way of illustration. The listing of these examples is indicative and is intended neither to be exhaustive, nor as an endorsement of the application of such measures by the Parties.

#### **Section A: Conduct of Negotiations and Relevant Obligations**

##### **Opening of Negotiations**

1. Parties intending to enter into negotiations towards an MRA are encouraged to inform the Professional Services Working Group established under Annex 15-C. The following information may be supplied:

- (a) the entities involved in discussions (for example, governments, national organizations in the professional services sector or institutes which have authority, statutory or otherwise, to enter into such negotiations);
- (b) a contact point to obtain further information;
- (c) the subject of the negotiations (specific activity covered); and
- (d) the expected time of the start of negotiations.

##### **Single Negotiating Entity**

2. If no single negotiating entity exists, the parties are encouraged to establish one.

##### **Results**

3. Upon the conclusion of an MRA, parties to the MRA are encouraged to inform the Professional Services Working Group, and may supply the following information in its notification:

- (a) the content of a new MRA; or
- (b) the significant modifications to an existing MRA.

### **Follow-up Actions**

4. As a follow-up action to a conclusion of an MRA, parties to the MRA are encouraged to inform the Professional Services Working Group of the following:

- (a) that the MRA comply with the provisions of this Chapter;
- (b) measures and actions taken regarding the implementation and monitoring of the MRA; and
- (c) that the text of the MRA is publicly available.

## **Section B: Form and Content of MRAs**

### **Introductory Note**

This Section sets out various issues that may be addressed in MRA negotiations and, if so agreed during the negotiations, included in the MRA. It includes some basic ideas on what a Party might require of foreign professionals seeking to take advantage of an MRA.

### **Participants**

5. The MRA should identify clearly:
- (a) the parties to the MRA (for example, governments, national professional organisations, or institutes);
  - (b) competent authorities or organizations other than the parties to the MRA, if any, and their position in relation to the MRA; and
  - (c) the status and area of competence of each party to the MRA.

### **Purpose of the MRA**

6. The purpose of the MRA should be clearly stated.

## **Scope of the MRA**

7. The MRA should set out clearly:
  - (a) its scope in terms of the specific profession or titles and professional activities it covers in the territories of the parties;
  - (b) who is entitled to use the professional titles concerned;
  - (c) whether the recognition mechanism is based on qualifications, on the license obtained in the country of origin or on some other requirement; and
  - (d) whether it covers temporary access, permanent access, or both, to the profession concerned.

## **MRA Provisions**

8. The MRA should clearly specify the conditions to be met for recognition in the territories of each Party and the level of equivalence agreed between the parties to the MRA. The precise terms of the MRA depend on the basis on which the MRA is founded, as discussed above. If the requirements of the various sub-national jurisdictions of a party to an MRA are not identical, the difference should be clearly presented. The MRA should address the applicability of the recognition granted by one sub-national jurisdiction in the other sub-national jurisdictions of the party to the MRA.

9. The Parties should seek to ensure that recognition does not require citizenship or any form of residency, or education, experience, or training in the territory of the host jurisdiction.

## **Eligibility for Recognition - Qualifications**

10. If the MRA is based on recognition of qualifications, then it should, where applicable, state:
  - (a) the minimum level of education required (including entry requirements, length of study, and subjects studied);
  - (b) the minimum level of experience required (including location, length, and conditions of practical training or supervised professional practice prior to licensing, and framework of ethical and disciplinary standards);
  - (c) examinations passed, especially examinations of professional competence;
  - (d) the extent to which home country qualifications are recognised in the host country; and

- (e) the qualifications which the parties to the MRA are prepared to recognize, for instance, by listing particular diplomas or certificates issued by certain institutions, or by reference to particular minimum requirements to be certified by the authorities of the country of origin, including whether the possession of a certain level of qualification would allow recognition for some activities but not others.

### **Eligibility for Recognition - Registration**

11. If the MRA is based on recognition of the licensing or registration decision made by regulators in the country of origin, it should specify the mechanism by which eligibility for such recognition may be established.

12. If it is considered necessary to provide for additional requirements in order to ensure the quality of the service, the MRA should set out the conditions under which those requirements may apply, for example, in case of shortcomings in relation to qualification requirements in the host country or knowledge of local law, practice, standards, and regulations. This knowledge should be essential for practice in the host country or required because there are differences in the scope of licensed practice.

13. If additional requirements are deemed necessary, the MRA should set out in detail what they entail (for example, examination, aptitude test, additional practice in the host country or in the country of origin, practical training, and language used for examination).

### **Mechanisms for Implementation**

14. The MRA could state:

- (a) the rules and procedures to be used to monitor and enforce the provisions of the MRA;
- (b) the mechanisms for dialogue and administrative cooperation between the parties to the MRA; and
- (c) the means of arbitration for disputes under the MRA.

15. As a guide to the treatment of individual applicants, the MRA could include details on:

- (a) the focal point of contact in each party to the MRA for information on all issues relevant to the application (such as the name and address of competent authorities, licensing formalities, and information on additional requirements which need to be met in the host country);

- (b) the duration of procedures for the processing of applications by the relevant authorities of the host country;
  - (c) the documentation required of applicants and the form in which it should be presented and any time limits for applications;
  - (d) acceptance of documents and certificates issued in the country of origin in relation to qualifications and licensing;
  - (e) the procedures of appeal to or review by the relevant authorities; and
  - (f) the fees that might be reasonably required.
16. The MRA could also include the following commitments:
- (a) that requests about the measures will be promptly dealt with;
  - (b) that adequate preparation time will be provided where necessary;
  - (c) that any exams or tests will be arranged with reasonable periodicity;
  - (d) that fees to applicants seeking to take advantage of the terms of the MRA will be in proportion to the cost to the host country or organisation; and
  - (e) that information on any assistance programmes in the host country for practical training, and any commitments of the host country in that context, be supplied.

### **Licensing and Other Provisions in the Host Country**

17. If applicable:
- (a) the MRA could also set out the means by which, and the conditions under which, a license is actually obtained following the establishment of eligibility, and what such license entails (such as a license and its content, membership of a professional body, and use of professional or academic titles);
  - (b) a licensing requirement, other than qualifications, should include, for example:
    - (i) an office address, an establishment requirement, or a residency requirement,
    - (ii) a language requirement,
    - (iii) proof of good conduct and financial standing,

- (iv) professional indemnity insurance,
- (v) compliance with host country's requirements for use of trade or firm names,  
and
- (vi) compliance with host country ethics, for instance independence and  
incompatibility.

### **Revision of the MRA**

18. If the MRA includes terms under which it can be reviewed or revoked, the details of such terms should be clearly stated.

## ANNEX 15-D

### PROGRAMMING SERVICES

#### *Simultaneous Substitution*

1. Canada shall rescind Broadcasting Regulatory Policy CRTC 2016-334 and Broadcasting Order CRTC 2016-335. With respect to simultaneous substitution of signals during the retransmission in Canada of the program referenced in those measures, Canada may not accord the program treatment less favorable than the treatment accorded to other programs originating in the United States retransmitted in Canada.
2. The United States and Canada shall each provide in its copyright law that:
  - (a) retransmission to the public of program signals not intended in the original transmission for free, over-the-air reception by the general public shall be permitted only with the authorization of the holder of the copyright in the program; and
  - (b) if the original transmission of the program is carried in signals intended for free, over-the-air reception by the general public, willful retransmission in altered form or non-simultaneous retransmission of signals carrying a copyright holder's program shall be permitted only with the authorization of the holder of the copyright in the program.
3. Other than as provided for in paragraph 1, nothing in subparagraph 2 (b) shall be construed to prevent a Party from maintaining existing measures relating to retransmission of a program carried in signals intended for free, over-the-air reception by the general public; or introducing measures to enable the local licensee of the copyrighted program to exploit fully the commercial value of its license.

#### *Home Shopping Programming Services*

4. Canada shall ensure that U.S. programming services specializing in home shopping, including modified versions of these U.S. programming services for the Canadian market, are authorized for distribution in Canada and may negotiate affiliation agreements with Canadian cable, satellite, and IPTV distributors.

## ANNEX 15-E

### MEXICO'S CULTURAL EXCEPTIONS

Recognizing that culture is an important component of the creative, symbolic and economic dimension of human development,

Affirming the fundamental right of freedom of expression and the right to plural and diverse information,

Recognizing that states have the sovereign right to preserve, develop and implement their cultural policies, to support their cultural industries for the purpose of strengthening the diversity of cultural expressions, and to preserve their cultural identity, and

In order to preserve and promote the development of Mexican culture, Mexico has negotiated reservations in its schedules to Annex I and Annex II for certain obligations in Chapter 14 (Investment) and Chapter 15 (Cross-Border Trade in Services), which are summarized below.

*In Annex I:*

#### Broadcasting (radio and free-to-air television):

Reservations taken against:

- National Treatment obligations for Investment and Cross-Border Trade in Services Chapters
- Local Presence obligation for Cross-Border Trade in Services Chapter
  - Sole concessions and frequency band concessions will be granted only to Mexican nationals or enterprises constituted under Mexican laws and regulations.
  - Investors of a Party or their investments may participate up to 49 per cent in concessionaire enterprises providing broadcasting services. This maximum foreign investment will be applied according to the reciprocity existent with the country in which the investor or trader who ultimately controls it, directly or indirectly, is constituted.
  - Concessions for indigenous social use shall be granted to indigenous people and indigenous communities of Mexico, with the objective to promote, develop and preserve languages, culture, knowledge, traditions, identity and their internal rules that, under principles of gender equality, enable the integration of

indigenous women in the accomplishment of the purposes for which the concession is granted.

- Under no circumstances may a concession, the rights conferred therein, facilities, auxiliary services, offices or accessories and properties affected thereto, be assigned, encumbered, pledged or given in trust, mortgaged, or transferred totally or partially to any foreign government or state.
- The State shall guarantee that broadcasting promotes the values of national identity.
- The broadcasting concessionaires shall use and stimulate local and national artistic values and expressions of Mexican culture, according to the characteristics of its programming.
- The daily programming with personal performances shall include more time covered by Mexicans.

#### Newspaper publishing

Reservation taken against:

- National Treatment obligation for Investment Chapter
  - Investors of another Party or their investments may only own, directly or indirectly, up to 49 per cent of the ownership interest in an enterprise established or to be established in the territory of Mexico engaged in the printing or publication of daily newspapers written primarily for a Mexican audience and distributed in the territory of Mexico.

#### Cinema services

Reservation taken against:

- National Treatment obligation for Investment Chapter
- Most-Favored-Nation Treatment obligation for Investment and Cross-Border Trade in Services Chapters
  - Exhibitors shall reserve 10 per cent of the total screen time to the projection of national films.

*In Annex II:*

Audiovisual services

Reservation taken against:

- Market Access obligation for Cross-Border Trade in Services Chapter
  - Mexico is taking only limited commitments in the Market Access obligation with respect to the audiovisual services sectors.