

## Chapter Twelve

### Cross-Border Trade in Services

#### Article 1201: Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to cross-border trade in services by service providers of another Party, including measures respecting:

- (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 and transportation systems in connection with the provision of a service;
- (d) the presence in its territory of a service provider of another Party; and
- (e) the provision of a bond or other form of financial security as a condition for the provision of a service.

2. This Chapter does not apply to:

- (a) financial services, as defined in Chapter Fourteen (Financial Services);
- (b) 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  - (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service, and
  - (ii) specialty air services;
- (c) procurement by a Party or a state enterprise; or
- (d) subsidies or grants provided by a Party or a state enterprise, including government-supported loans, guarantees and insurance.

3. Nothing in this Chapter shall be construed to:
  - (a) impose any obligation on a Party with respect to a national of another Party seeking access to its employment market, or employed on a permanent basis in its territory, or to confer any right on that national with respect to that access or employment; or
  - (b) prevent a Party from providing a service or performing a function such as law enforcement, correctional services, income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care, in a manner that is not inconsistent with this Chapter.

**Article 1202: National Treatment**

1. Each Party shall accord to service providers of another Party treatment no less favorable than that it accords, in like circumstances, to its own service providers.
2. The treatment accorded by a Party under paragraph 1 means, with respect to a state or province, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that state or province to service providers of the Party of which it forms a part.

**Article 1203: Most-Favored-Nation Treatment**

Each Party shall accord to service providers of another Party treatment no less favorable than that it accords, in like circumstances, to service providers of any other Party or of a non-Party.

**Article 1204: Standard of Treatment**

Each Party shall accord to service providers of any other Party the better of the treatment required by Articles 1202 and 1203.

**Article 1205: Local Presence**

No Party may require a service provider of another 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 provision of a service.

## **Article 1206: Reservations**

1. Articles 1202, 1203 and 1205 do not apply to:
  - (a) any existing non-conforming measure that is maintained by
    - (i) a Party at the federal level, as set out in its Schedule to Annex I,
    - (ii) a state or province, for two years after the date of entry into force of this Agreement, and thereafter as set out by a Party in its Schedule to Annex I in accordance with paragraph 2, or
    - (iii) a local 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 1202, 1203 and 1205.
2. Each Party may set out in its Schedule to Annex I, within two years of the date of entry into force of this Agreement, any existing non-conforming measure maintained by a state or province, not including a local government.
3. Articles 1202, 1203 and 1205 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out in its Schedule to Annex II.

## **Article 1207: Quantitative Restrictions**

1. Each Party shall set out in its Schedule to Annex V any quantitative restriction that it maintains at the federal level.
2. Within one year of the date of entry into force of this Agreement, each Party shall set out in its Schedule to Annex V any quantitative restriction maintained by a state or province, not including a local government.
3. Each Party shall notify the other Parties of any quantitative restriction that it adopts, other than at the local government level, after the date of entry into force of this Agreement and shall set out the restriction in its Schedule to Annex V.
4. The Parties shall periodically, but in any event at least every two years, endeavor to negotiate the liberalization or removal of the quantitative restrictions set out in Annex V pursuant to paragraphs

1 through 3.

### **Article 1208: Liberalization of Non-Discriminatory Measures**

Each Party shall set out in its Schedule to Annex VI its commitments to liberalize quantitative restrictions, licensing requirements, performance requirements or other non-discriminatory measures.

### **Article 1209: Procedures**

The Commission shall establish procedures for:

- (a) a Party to notify and include in its relevant Schedule
  - (i) state or provincial measures in accordance with Article 1206(2),
  - (ii) quantitative restrictions in accordance with Article 1207(2) and (3),
  - (iii) commitments pursuant to Article 1208, and
  - (iv) amendments of measures referred to in Article 1206(1)(c); and
- (b) consultations on reservations, quantitative restrictions or commitments with a view to further liberalization.

### **Article 1210: Licensing and Certification**

1. With a view to ensuring that any measure adopted or maintained by a Party relating to the licensing or certification of nationals of another Party does not constitute an unnecessary barrier to trade, each Party shall endeavor to ensure that any such measure:

- (a) is based on objective and transparent criteria, such as competence and the ability to provide a service;
- (b) is not more burdensome than necessary to ensure the quality of a service;  
and
- (c) does not constitute a disguised restriction on the cross-border provision of a service.

2. Where a Party recognizes, unilaterally or by agreement, education, experience, licenses or certifications obtained in the territory of another Party or of a non-Party:

- (a) nothing in Article 1203 shall be construed to require the Party to accord such recognition to education, experience, licenses or certifications obtained in the territory of another Party; and
- (b) the Party shall afford another Party an adequate opportunity to demonstrate that education, experience, licenses or certifications obtained in that other Party's territory should also be recognized or to conclude an agreement or arrangement of comparable effect.

3. Each Party shall, within two years of the date of entry into force of this Agreement, eliminate any citizenship or permanent residency requirement set out in its Schedule to Annex I that it maintains for the licensing or certification of professional service providers of another Party. Where a Party does not comply with this obligation with respect to a particular sector, any other Party may, in the same sector and for such period as the non-complying Party maintains its requirement, solely have recourse to maintaining an equivalent requirement set out in its Schedule to Annex I or reinstating:

- (a) any such requirement at the federal level that it eliminated pursuant to this Article; or
- (b) on notification to the non-complying Party, any such requirement at the state or provincial level existing on the date of entry into force of this Agreement.

4. The Parties shall consult periodically with a view to determining the feasibility of removing any remaining citizenship or permanent residency requirement for the licensing or certification of each other's service providers.

5. Annex 1210.5 applies to measures adopted or maintained by a Party relating to the licensing or certification of professional service providers.

#### **Article 1211: Denial of Benefits**

1. A Party may deny the benefits of this Chapter to a service provider of another Party where the Party establishes that:

- (a) the service is being provided by an enterprise owned or controlled by nationals of a non-Party, and
  - (i) the denying Party does not maintain diplomatic relations with the non-Party, or
  - (ii) the denying Party adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise; or

- (b) the cross-border provision of a transportation service covered by this Chapter is provided using equipment not registered by any Party.

2. Subject to prior notification and consultation in accordance with Articles 1803 (Notification and Provision of Information) and 2006 (Consultations), a Party may deny the benefits of this Chapter to a service provider of another Party where the Party establishes that the service is being provided by an enterprise that is owned or controlled by persons of a non-Party and that has no substantial business activities in the territory of any Party.

#### **Article 1212: Sectoral Annex**

Annex 1212 applies to specific sectors.

#### **Article 1213: Definitions**

1. For purposes of this Chapter, a reference to a federal, state or provincial government includes any non-governmental body in the exercise of any regulatory, administrative or other governmental authority delegated to it by that government.
2. For purposes of this Chapter:

**cross-border provision of a service** or **cross-border trade in services** means the provision 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 provision of a service in the territory of a Party by an investment, as defined in Article 1139 (Investment - Definitions), in that territory;

**enterprise** means an "enterprise" as defined in Article 201 (Definitions of General Application), and a branch of an enterprise;

**enterprise of a Party** means an enterprise constituted or organized under the law of a Party, and a branch located in the territory of a Party and carrying out business activities there;

**professional services** means services, the provision 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 services provided by tradespersons or vessel and aircraft

crew members;

**quantitative restriction** means a non-discriminatory measure that imposes limitations on:

- (a) the number of service providers, whether in the form of a quota, a monopoly or an economic needs test, or by any other quantitative means; or
- (b) the operations of any service provider, whether in the form of a quota or an economic needs test, or by any other quantitative means;

**service provider of a Party** means a person of a Party that seeks to provide or provides a service; and

**specialty air services** means aerial mapping, aerial surveying, aerial photography, forest fire management, fire fighting, aerial advertising, glider towing, parachute jumping, aerial construction, heli-logging, aerial sightseeing, flight training, aerial inspection and surveillance, and aerial spraying services.

## **Annex 1210.5**

### **Professional Services**

#### **Section A - General Provisions**

##### *Processing of Applications for Licenses and Certifications*

1. Each Party shall ensure that its competent authorities, within a reasonable time after the submission by a national of another Party of an application for a license or certification:
  - (a) where the application is complete, make a determination on the application and inform the applicant of that determination; or
  - (b) where the application is not complete, inform the applicant without undue delay of the status of the application and the additional information that is required under the Party's law.

##### *Development of Professional Standards*

2. The Parties shall encourage the relevant bodies in their respective territories to develop mutually acceptable standards and criteria for licensing and certification of professional service providers and to provide recommendations on mutual recognition to the Commission.
3. The standards and criteria referred to in paragraph 2 may be developed with regard to the following matters:
  - (a) education - accreditation of schools or academic programs;
  - (b) examinations - qualifying examinations for licensing, including alternative methods of assessment such as oral examinations and interviews;
  - (c) experience - length and nature of experience required for licensing;
  - (d) conduct and ethics - standards of professional conduct and the nature of disciplinary action for non-conformity with those standards;
  - (e) professional development and re-certification - continuing education and ongoing requirements to maintain professional certification;
  - (f) scope of practice - extent of, or limitations on, permissible activities;

- (g) local knowledge - requirements for knowledge of such matters as local laws, regulations, language, geography or climate; and
- (h) consumer protection - alternatives to residency requirements, including bonding, professional liability insurance and client restitution funds, to provide for the protection of consumers.

4. On receipt of a recommendation referred to in paragraph 2, the Commission shall review the recommendation within a reasonable time to determine whether it is consistent with this Agreement. Based on the Commission's review, each Party shall encourage its respective competent authorities, where appropriate, to implement the recommendation within a mutually agreed time.

#### *Temporary Licensing*

5. Where the Parties agree, each Party shall encourage the relevant bodies in its territory to develop procedures for the temporary licensing of professional service providers of another Party.

#### *Review*

6. The Commission shall periodically, and at least once every three years, review the implementation of this Section.

### **Section B - Foreign Legal Consultants**

1. Each Party shall, in implementing its obligations and commitments regarding foreign legal consultants as set out in its relevant Schedules and subject to any reservations therein, ensure that a national of another Party is permitted to practice or advise on the law of any country in which that national is authorized to practice as a lawyer.

#### *Consultations With Professional Bodies*

2. Each Party shall consult with its relevant professional bodies to obtain their recommendations on:

- (a) the form of association or partnership between lawyers authorized to practice in its territory and foreign legal consultants;
- (b) the development of standards and criteria for the authorization of foreign legal consultants in conformity with Article 1210; and
- (c) other matters relating to the provision of foreign legal consultancy services.

3. Prior to initiation of consultations under paragraph 7, each Party shall encourage its relevant professional bodies to consult with the relevant professional bodies designated by each of the other Parties regarding the development of joint recommendations on the matters referred to in paragraph 2.

*Future Liberalization*

4. Each Party shall establish a work program to develop common procedures throughout its territory for the authorization of foreign legal consultants.

5. Each Party shall promptly review any recommendation referred to in paragraphs 2 and 3 to ensure its consistency with this Agreement. If the recommendation is consistent with this Agreement, each Party shall encourage its competent authorities to implement the recommendation within one year.

6. Each Party shall report to the Commission within one year of the date of entry into force of this Agreement, and each year thereafter, on its progress in implementing the work program referred to in paragraph 4.

7. The Parties shall meet within one year of the date of entry into force of this Agreement with a view to:

- (a) assessing the implementation of paragraphs 2 through 5;
- (b) amending or removing, where appropriate, reservations on foreign legal consultancy services; and
- (c) assessing further work that may be appropriate regarding foreign legal consultancy services.

**Section C - Temporary Licensing of Engineers**

1. The Parties shall meet within one year of the date of entry into force of this Agreement to establish a work program to be undertaken by each Party, in conjunction with its relevant professional bodies, to provide for the temporary licensing in its territory of nationals of another Party who are licensed as engineers in the territory of that other Party.

2. To this end, each Party shall consult with its relevant professional bodies to obtain their recommendations on:

- (a) the development of procedures for the temporary licensing of such engineers to permit them to practice their engineering specialties in each jurisdiction in its territory;
  - (b) the development of model procedures for adoption by the competent authorities throughout its territory to facilitate the temporary licensing of such engineers;
  - (c) the engineering specialties to which priority should be given in developing temporary licensing procedures; and
  - (d) other matters relating to the temporary licensing of engineers identified by the Party in such consultations.
3. Each Party shall request its relevant professional bodies to make recommendations on the matters referred to in paragraph 2 within two years of the date of entry into force of this Agreement.
4. Each Party shall encourage its relevant professional bodies to meet at the earliest opportunity with the relevant professional bodies of the other Parties with a view to cooperating in the development of joint recommendations on the matters referred to in paragraph 2 within two years of the date of entry into force of this Agreement. Each Party shall request an annual report from its relevant professional bodies on the progress achieved in developing those recommendations.
5. The Parties shall promptly review any recommendation referred to in paragraph 3 or 4 to ensure its consistency with this Agreement. If the recommendation is consistent with this Agreement, each Party shall encourage its competent authorities to implement the recommendation within one year.
6. The Commission shall review the implementation of this Section within two years of the date of entry into force of this Section.
7. Appendix 1210.5-C applies to the Parties specified therein.

### **Appendix 1210.5 - C**

#### **Civil Engineers**

The rights and obligations of Section C of Annex 1210.5 apply to Mexico with respect to civil engineers ("ingenieros civiles") and to such other engineering specialties that Mexico may designate.

## Annex 1212

### Land Transportation

#### *Contact Points*

1. Further to Article 1801 (Contact Points), each Party shall designate by January 1, 1994 contact points to provide information published by that Party relating to land transportation services regarding operating authority, safety requirements, taxation, data, studies and technology, and to provide assistance in contacting its relevant government agencies.

#### *Review Process*

2. The Commission shall, during the fifth year after the date of entry into force of this Agreement and during every second year thereafter until the liberalization for bus and truck transportation set out in the Parties' Schedules to Annex I is complete, receive and consider a report from the Parties that assesses progress respecting liberalization, including:

- (a) the effectiveness of the liberalization;
- (b) specific problems for, or unanticipated effects on, each Party's bus and truck transportation industries arising from liberalization; and
- (c) modifications to the period for liberalization.

The Commission shall endeavor to resolve any matter arising from its consideration of a report.

3. The Parties shall consult, no later than seven years after the date of entry into force of this Agreement, to consider further liberalization commitments.