

## CHAPTER 10

### CROSS-BORDER TRADE IN SERVICES

#### Article 10.1: Definitions

For the purposes of this Chapter:

**airport operation services** means the supply of air terminal, airfield and other airport infrastructure operation services on a fee or contract basis. 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 another Party;
- (b) in the territory of a 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 1.3 (General Definitions), and a branch of an enterprise;

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

**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;

**measures adopted or maintained by 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, for each Party, any service that 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 seeks to supply or supplies a service; and

**specialty air services** means any specialised 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 10.2: Scope**

1. This Chapter shall apply to measures adopted or maintained by a Party affecting cross-border trade in services by service suppliers of another Party. Such 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 distribution, transport or telecommunications networks and services in connection with the supply of a service;

- (d) the presence in the Party's territory of a service supplier of another 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) Article 10.5 (Market Access), Article 10.8 (Domestic Regulation) and Article 10.11 (Transparency) shall also apply to measures adopted or maintained by a Party affecting the supply of a service in its territory by a covered investment<sup>1</sup>; and
  - (b) Annex 10-B (Express Delivery Services) shall also apply to measures adopted or maintained by a Party affecting the supply of express delivery services, including by a covered investment.
3. This Chapter shall not apply to:
- (a) financial services as defined in Article 11.1 (Definitions), except that paragraph 2(a) shall apply if the financial service is supplied by a covered investment that is not a covered investment in a financial institution as defined in Article 11.1 (Definitions) in the Party's territory;
  - (b) government procurement;
  - (c) services supplied in the exercise of governmental authority; or
  - (d) subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance.
4. This Chapter does not impose any 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.
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 during which an aircraft is withdrawn from service, excluding so-called line maintenance;

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<sup>1</sup> For greater certainty, nothing in this Chapter, including Annexes 10-A (Professional Services), 10-B (Express Delivery Services), and 10-C (Non-Conforming Measures Ratchet Mechanism), is subject to investor-State dispute settlement pursuant to Section B of Chapter 9 (Investment).

- (b) selling and marketing of air transport services;
- (c) computer reservation system services;
- (d) specialty air services;
- (e) airport operation services; and
- (f) ground handling services.

6. In the event of any inconsistency between this Chapter and a bilateral, plurilateral or multilateral air services agreement to which two or more Parties are party, the air services agreement shall prevail in determining the rights and obligations of those Parties that are party to that air services agreement.

7. If two or more Parties have the same obligations under this Agreement and a bilateral, plurilateral or multilateral air services agreement, those Parties may invoke the dispute settlement procedures of this Agreement only after any dispute settlement procedures in the other agreement have been exhausted.

8. If the *Annex on Air Transport Services* of GATS is amended, the Parties shall jointly review any new definitions with a view to aligning the definitions in this Agreement with those definitions, as appropriate.

### **Article 10.3: National Treatment<sup>2</sup>**

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

2. For greater certainty, the treatment to be accorded by a Party under paragraph 1 means, with respect to a regional level of government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that regional level of government to service suppliers of the Party of which it forms a part.

### **Article 10.4: Most-Favoured-Nation Treatment**

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

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<sup>2</sup> For greater certainty, whether treatment is accorded in “like circumstances” under Article 10.3 (National Treatment) or Article 10.4 (Most-Favoured-Nation Treatment) 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 10.5: Market Access**

No Party shall 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 service output expressed in terms of designated numerical units in the form of quotas 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 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 10.6: Local Presence**

No Party shall require a service supplier 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 supply of a service.

### **Article 10.7: Non-Conforming Measures**

1. Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment), Article 10.5 (Market Access) and Article 10.6 (Local Presence) shall not apply to:

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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.

- (a) any 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 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 Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment), Article 10.5 (Market Access) or Article 10.6 (Local Presence).<sup>4</sup>

2. Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment), Article 10.5 (Market Access) and Article 10.6 (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 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 subparagraph 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.<sup>5</sup>

### **Article 10.8: Domestic Regulation**

1. Each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

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<sup>4</sup> With respect to Viet Nam, Annex 10-C (Non-Conforming Measures Ratchet Mechanism) applies.

<sup>5</sup> 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).

2. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, while recognising the right to regulate and to introduce new regulations on the supply of services in order to meet its policy objectives, each Party shall endeavour to ensure that any such measures that it adopts or maintains are:

- (a) based on objective and transparent criteria, such as competence and the ability to supply the service; and
- (b) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

3. In determining whether a Party is in conformity with its obligations under paragraph 2, account shall be taken of international standards of relevant international organisations applied by that Party.<sup>6</sup>

4. If a Party requires authorisation for the supply of a service, it shall ensure that its competent authorities:

- (a) within a reasonable period of time after the submission of an application considered complete under its laws and regulations, inform the applicant of the decision concerning the application;
- (b) to the extent practicable, establish an indicative timeframe for the processing of an application;
- (c) if an application is rejected, to the extent practicable, inform the applicant of the reasons for the rejection, either directly or on request, as appropriate;
- (d) on request of the applicant, provide, without undue delay, information concerning the status of the application;
- (e) to the extent practicable, provide the applicant with the opportunity to correct minor errors and omissions in the application and endeavour to provide guidance on the additional information required; and
- (f) if they deem appropriate, accept copies of documents that are authenticated in accordance with the Party's laws in place of original documents.

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<sup>6</sup> "Relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of at least all Parties to the Agreement.

5. Each Party shall ensure that any authorisation fee charged by any of its competent authorities is reasonable, transparent and does not, in itself, restrict the supply of the relevant service.<sup>7</sup>

6. If licensing or qualification requirements include the completion of an examination, each Party shall ensure that:

- (a) the examination is scheduled at reasonable intervals; and
- (b) a reasonable period of time is provided to enable interested persons to submit an application.

7. Each Party shall ensure that there are procedures in place domestically to assess the competency of professionals of another Party.

8. Paragraphs 1 through 7 shall not apply to the non-conforming aspects of measures that are not subject to the obligations under Article 10.3 (National Treatment) or Article 10.5 (Market Access) by reason of an entry in a Party's Schedule to Annex I, or to measures that are not subject to the obligations under Article 10.3 (National Treatment) or Article 10.5 (Market Access) by reason of an entry in a Party's Schedule to Annex II.

9. If the results of the negotiations related to paragraph 4 of Article VI of GATS, or the results of any similar negotiations undertaken in other multilateral fora in which the Parties participate, enter into effect, the Parties shall jointly review these results with a view to bringing them into effect, as appropriate, under this Agreement.

#### **Article 10.9: 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, it may recognise the education or experience obtained, requirements met, or licences or certifications granted, in the territory of another Party or a non-Party. That recognition, which may be achieved through harmonisation 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 recognises, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licences or certifications granted, in the territory of another Party or a non-Party, nothing in Article 10.4 (Most-Favoured-Nation Treatment) shall be construed to require the Party to

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<sup>7</sup> For the purposes of this paragraph, authorisation fees do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

accord recognition to the education or experience obtained, requirements met, or licences or certifications granted, in the territory of any other Party.

3. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity 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 autonomously, it shall afford adequate opportunity to another Party to demonstrate that education, experience, licences or certifications obtained or requirements met in that other Party's territory should be recognised.

4. A Party shall not accord recognition in a manner that would constitute a means of discrimination between Parties or between Parties and non-Parties 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.

5. As set out in Annex 10-A (Professional Services), the Parties shall endeavour to facilitate trade in professional services, including through the establishment of a Professional Services Working Group.

#### **Article 10.10: 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 persons of a non-Party, and the denying Party adopts or maintains measures with respect to the non-Party or a person of 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.

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 persons of a non-Party or by persons of the denying Party that has no substantial business activities in the territory of any Party other than the denying Party.

#### **Article 10.11: Transparency**

1. Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding its regulations that relate to the subject matter of this Chapter.<sup>8</sup>

2. If a Party does not provide advance notice and opportunity for comment pursuant to Article 26.2.2 (Publication) with respect to regulations that relate to

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<sup>8</sup> The implementation of the obligation to maintain or establish appropriate mechanisms may need to take into account the resource and budget constraints of small administrative agencies.

the subject matter in this Chapter, it shall, to the extent practicable, provide in writing or otherwise notify interested persons of the reasons for not doing so.

3. To the extent possible, each Party shall allow reasonable time between publication of final regulations and the date when they enter into effect.

#### **Article 10.12: Payments and Transfers<sup>9</sup>**

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<sup>10</sup> that relate to:

- (a) bankruptcy, insolvency or the protection of the rights of creditors;
- (b) issuing, trading or dealing in securities, futures, options or derivatives;
- (c) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;
- (d) criminal or penal offences; or
- (e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

#### **Article 10.13: Other Matters**

The Parties recognise the importance of air services in facilitating the expansion of trade and enhancing economic growth. Each Party may consider working with other Parties in appropriate fora toward liberalising air services, such as through agreements allowing air carriers to have flexibility to decide on their routing and frequencies.

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<sup>9</sup> For greater certainty, this Article is subject to Annex 9-E (Transfers).

<sup>10</sup> 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 programmes.

## ANNEX 10-A

### PROFESSIONAL SERVICES

#### *General Provisions*

1. Each Party shall consult with relevant bodies in its territory to seek to identify professional services when two or more Parties are mutually interested in establishing dialogue on issues that relate to the recognition of professional qualifications, licensing or registration.
2. Each Party shall encourage its relevant bodies to establish dialogues with the relevant bodies of other Parties, with a view to recognising professional qualifications, and facilitating licensing or registration procedures.
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. A Party may consider, if feasible, taking steps to implement a temporary or project specific licensing or registration regime based on a foreign supplier's home licence or recognised professional body membership, without the need for further written examination. That temporary or limited licence regime should not operate to prevent a foreign supplier from gaining a local licence once that supplier satisfies the applicable local licensing requirements.

#### *Engineering and Architectural Services*

5. Further to paragraph 3, the Parties recognise the work in APEC to promote the mutual recognition of professional competence in engineering and architecture, and the professional mobility of these professions, under the APEC Engineer and APEC Architect frameworks.
6. Each Party shall encourage its relevant bodies to work towards becoming authorised to operate APEC Engineer and APEC Architect Registers.
7. A Party shall encourage its relevant bodies operating APEC Engineer or APEC Architect Registers to enter into mutual recognition arrangements with the relevant bodies of other Parties operating those registers.

### ***Temporary Licensing or Registration of Engineers***

8. Further to paragraph 4, in taking steps to implement a temporary or project-specific licensing or registration regime for engineers, a Party shall consult with its relevant professional bodies with respect to any recommendations for:

- (a) the development of procedures for the temporary licensing or registration of engineers of another Party to permit them to practise their engineering specialties in its territory;
- (b) the development of model procedures for adoption by the competent authorities throughout its territory to facilitate the temporary licensing or registration of those engineers;
- (c) the engineering specialties to which priority should be given in developing temporary licensing or registration procedures; and
- (d) other matters relating to the temporary licensing or registration of engineers identified in the consultations.

### ***Legal Services***

9. The Parties recognise that transnational legal services that cover the laws of multiple jurisdictions play an essential role in facilitating trade and investment and in promoting economic growth and business confidence.

10. If a Party regulates or seeks to regulate foreign lawyers and transnational legal practice, the Party shall encourage its relevant bodies to consider, subject to its laws and regulations, whether or in what manner:

- (a) foreign lawyers may practise foreign law on the basis of their right to practise that law in their home jurisdiction;
- (b) foreign lawyers may prepare for and appear in commercial arbitration, conciliation and mediation proceedings;
- (c) local ethical, conduct and disciplinary standards are applied to foreign lawyers in a manner that is no more burdensome for foreign lawyers than the requirements imposed on domestic (host country) lawyers;
- (d) alternatives for minimum residency requirements are provided for foreign lawyers, such as requirements that foreign lawyers disclose to clients their status as a foreign lawyer, or maintain professional

indemnity insurance or alternatively disclose to clients that they lack that insurance;

- (e) the following modes of providing transnational legal services are accommodated:
  - (i) on a temporary fly-in, fly-out basis;
  - (ii) through the use of web-based or telecommunications technology;
  - (iii) by establishing a commercial presence; and
  - (iv) through a combination of fly-in, fly-out and one or both of the other modes listed in subparagraphs (ii) and (iii);
- (f) foreign lawyers and domestic (host country) lawyers may work together in the delivery of fully integrated transnational legal services; and
- (g) a foreign law firm may use the firm name of its choice.

#### ***Professional Services Working Group***

11. The Parties hereby establish a Professional Services Working Group (Working Group), composed of representatives of each Party, to facilitate the activities listed in paragraphs 1 through 4.

12. The Working Group shall liaise, as appropriate, to support the Parties' relevant professional and regulatory bodies in pursuing the activities listed in paragraphs 1 through 4. This support may include providing points of contact, facilitating meetings and providing information regarding regulation of professional services in the Parties' territories.

13. The Working Group shall meet annually, or as agreed by the Parties, to discuss progress towards the objectives in paragraphs 1 through 4. For a meeting to be held, at least two Parties must participate. It is not necessary for representatives of all Parties to participate in order to hold a meeting of the Working Group.

14. The Working Group shall report to the Commission on its progress and on the future direction of its work, within two years of the date of entry into force of this Agreement.

15. Decisions of the Working Group shall have effect only in relation to those Parties that participated in the meeting at which the decision was taken, except if:

- (a) otherwise agreed by all Parties; or
- (b) a Party that did not participate in the meeting requests to be covered by the decision and all Parties originally covered by the decision agree.

## ANNEX 10-B

### EXPRESS DELIVERY SERVICES

1. For the purposes of this Annex, **express delivery services** means the collection, transport and delivery of documents, printed matter, parcels, goods or other items, on an expedited basis, while tracking and maintaining control of these items throughout the supply of the service. Express delivery services do not include air transport services, services supplied in the exercise of governmental authority, or maritime transport services.<sup>11</sup>
2. For the purposes of this Annex, **postal monopoly** means a measure maintained by a Party making a postal operator within the Party's territory the exclusive supplier of specified collection, transport and delivery services.
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.<sup>12</sup>
4. The Parties confirm their desire to maintain at least the level of market openness for express delivery services that each provides on the date of its signature of this Agreement. If a Party considers that another Party is not

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<sup>11</sup> For greater certainty, express delivery services does not include: (a) for Australia, services reserved for exclusive supply by Australia Post as set out in the *Australian Postal Corporation Act 1989* and its subordinate legislation and regulations; (b) for Brunei Darussalam, reserved exclusive rights for collection and delivery of letters by the Postal Services Department as set out in the *Post Office Act* (Chapter 52 of the Laws of Brunei), the Guidelines to Application of License for the Provision of Local Express Letter Service (2000) and the Guidelines to Application of License for the Provision of International Express Letter Service (2000); (c) for Canada, services reserved for exclusive supply by Canada Post Corporation as set out in the *Canada Post Corporation Act* and its regulations; (d) for Japan, correspondence delivery services within the meaning of the *Law Concerning Correspondence Delivery Provided by Private Operators* (Law No. 99, 2002) other than special correspondence delivery services as set out in Article 2, paragraph 7 of the law; (e) for Malaysia, reserved exclusive rights for collection and delivery of letters by Pos Malaysia as provided for under the *Postal Services Act 2012*; (f) for Mexico, mail services reserved for exclusive supply by the Mexican Postal Service as set out in the Mexican Postal laws and regulations, as well as motor carrier freight transportation services, as set forth in Title III of the *Roads, Bridges, and Federal Motor Carrier Transportation Law* and its regulations; (g) for New Zealand, the fastpost service and equivalent priority domestic mail services; (h) for Singapore, postal services as set out in the *Postal Services Act* (Cap 237A, 2000 Rev Ed) and certain express letter services which are administered under the Postal Services (Class License) Regulations 2005; (i) for the United States, delivery of letters over post routes subject to 18 U.S.C. 1693–1699 and 39 U.S.C. 601–606, but does include delivery of letters subject to the exceptions therein; and (j) for Viet Nam, reserved services as set out in Viet Nam Postal Law and relevant legal documents.

<sup>12</sup> For greater certainty, the Parties understand that the scope of Chile's postal monopoly is defined on the basis of objective criteria by Decree 5037 (1960) and the ability of suppliers to supply delivery services in Chile is not limited by this Decree.

maintaining that level of market openness, it may request consultations. The other Party shall afford adequate opportunity for consultations and, to the extent possible, provide information in response to inquiries regarding the level of market openness and any related matter.

5. No Party shall allow a supplier of services covered by a postal monopoly to cross-subsidise its own or any other competitive supplier's express delivery services with revenues derived from monopoly postal services.<sup>13</sup>

6. Each Party shall ensure that any 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 commitments under Article 9.4 (National Treatment), Article 10.3 (National Treatment) or Article 10.5 (Market Access) with respect to the supply of express delivery services.<sup>14</sup>

7. No Party shall:

- (a) require an express delivery service supplier of another Party, as a condition of authorisation or licensing, to supply a basic universal postal service; or
- (b) assess fees or other charges exclusively on express delivery service suppliers for the purpose of funding the supply of another delivery service.<sup>15</sup>

8. Each Party shall ensure that any authority responsible for regulating express delivery services is not accountable to any supplier of express delivery services, and that the decisions and procedures that the authority adopts are impartial, non-discriminatory and transparent with respect to all express delivery service suppliers in its territory.

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<sup>13</sup> In the case of Viet Nam, this obligation shall not apply until three years after the date of entry into force of this Agreement for it. During this period, if a Party considers that Viet Nam is allowing such cross-subsidisation, it may request consultations. Viet Nam shall afford adequate opportunity for consultations and, to the extent possible, shall provide information in response to inquiries regarding the cross-subsidisation.

<sup>14</sup> For greater certainty, a supplier of services covered by a postal monopoly that exercises a right or privilege incidental to or associated with its monopoly position in a manner that is consistent with the Party's commitments listed in this paragraph with respect to express delivery services is not acting in a manner inconsistent with this paragraph.

<sup>15</sup> This paragraph shall not be construed to prevent a Party from imposing non-discriminatory fees on delivery service suppliers on the basis of objective and reasonable criteria, or from assessing fees or other charges on the express delivery services of its own supplier of services covered by a postal monopoly.

## ANNEX 10-C

### NON-CONFORMING MEASURES RATCHET MECHANISM

Notwithstanding Article 10.7.1(c) (Non-Conforming Measures), for Viet Nam for three years after the date of entry into force of this Agreement for it:

- (a) Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment), Article 10.5 (Market Access) and Article 10.6 (Local Presence) shall not apply to an amendment to any non-conforming measure referred to in Article 10.7.1(a) (Non-Conforming Measures) to the extent that the amendment does not decrease the conformity of the measure, as it existed at the date of entry into force of this Agreement for Viet Nam, with Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment), Article 10.5 (Market Access) or Article 10.6 (Local Presence);
- (b) Viet Nam shall not withdraw a right or benefit from a service supplier of another Party, in reliance on which the service supplier has taken any concrete action,<sup>16</sup> through an amendment to any non-conforming measure referred to in Article 10.7.1(a) (Non-Conforming Measures) that decreases the conformity of the measure as it existed immediately before the amendment; and
- (c) Viet Nam shall provide to the other Parties the details of any amendment to any non-conforming measure referred to in Article 10.7.1(a) (Non-Conforming Measures) that would decrease the conformity of the measure, as it existed immediately before the amendment, at least 90 days before making the amendment.

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<sup>16</sup> Concrete action includes the channelling of resources or capital in order to establish or expand a business and applying for permits and licenses.