Chapter Eleven

Cross-Border Trade in Services

Article 11.1: Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party affecting cross-border trade in services by service suppliers of the other Party. Such measures include measures affecting:

(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, transport, or telecommunications networks and services in connection with the supply of a service;

(d) the presence in its territory of a service supplier of the other Party; and

(e) the provision of a bond or other form of financial security as a condition for the supply of a service.

2. For purposes of this Chapter, "measures adopted or maintained by a Party" means measures adopted or maintained by:

(a) central, regional, or local governments and authorities; and

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

3. Articles 11.4, 11.7, and 11.8 also apply to measures by a Party affecting the supply of a service in its territory by an investor of the other Party as defined in Article 10.27 (Definitions) or a covered investment.[1]

[1] The Parties understand that nothing in this Chapter, including this paragraph, is subject to investor-state dispute settlement pursuant to Section B of Chapter Ten (Investment).

4. This Chapter does not apply to:

(a) financial services, as defined in Article 12.19 (Definitions), except as provided in paragraph 3;

(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(i) aircraft repair and maintenance services during which an aircraft is withdrawn from service, and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; or

(d) subsidies or grants provided by a Party or a state enterprise, including government-supported loans, guarantees, and insurance.

5. This Chapter does not impose any obligation on a Party with respect to a national of the other Party seeking access to its employment market, or 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. This Chapter does not apply to services supplied in the exercise of governmental authority. A "service supplied in the exercise of governmental authority" means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.

Article 11.2: National Treatment

1. Each Party shall accord to service suppliers[2] of the other Party treatment no less favorable than that it accords, in like circumstances, to its own service suppliers.

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

[2] The Parties understand that "service suppliers" has the same meaning as "services and service suppliers" in Article XVII:1 of GATS.

Article 11.3: Most-Favored-Nation Treatment

Each Party shall accord to service suppliers[3] of the other Party treatment no less favorable than that it accords, in like circumstances, to service suppliers of a non-Party.

Article 11.4: Market Access

Neither Party may, either on the basis of a regional subdivision or on the basis of its entire territory, adopt or maintain measures that:

(a) impose limitations on:

(i) the number of service suppliers, [4] 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 on the total quantity of services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test,[5] 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 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.

---

[3] The Parties understand that "service suppliers" has the same meaning as "services and service suppliers" in Article II:1 of GATS.

[4] The Parties understand that "service suppliers" has the same meaning as "service and service suppliers" in Article XVI of GATS.

[5] This clause does not cover measures of a Party which limit inputs for the supply of services.

Article 11.5: Local Presence

Neither Party may require a service supplier of the other Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border supply of a service.

Article 11.6: Non-conforming Measures

1. Articles 11.2, 11.3, 11.4, and 11.5 do not apply to:

   (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 Articles 11.2, 11.3 , 11.4, or 11.5.

2. Articles 11.2, 11.3, 11.4, and 11.5 do not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities, as set out in its Schedule to Annex II.

3. Annex 11.6 sets out specific commitments by the Parties.

Article 11.7: Transparency in Development and Application of Regulations[6]

Further to Chapter Twenty (Transparency):

(a) each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding their regulations relating to the subject matter of this Chapter;[7]

(b) at the time it adopts final regulations relating to the subject matter of this Chapter, each Party shall, to the extent possible, including upon request, address in writing substantive comments received from interested persons with respect to the proposed regulations; and

(c) to the extent possible, each Party shall allow a reasonable period of time between publication of final regulations and their effective date.

Article 11.8: Domestic Regulation

1. Where a Party requires authorization for the supply of a service, the competent authorities of that Party shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Party shall provide, without undue delay, information concerning the status of the application. This obligation shall not apply to authorization requirements that are within the scope of Article 11.6(2).

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, each Party shall endeavor to ensure, as appropriate for individual sectors, 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;

(b) not more burdensome than necessary to ensure the quality of the service; and

---

[6] For greater certainty, "regulations" includes regulations establishing or applying to licensing authorization or criteria.

[7] Chile's implementation of its obligation to establish appropriate mechanisms for small administrative agencies may need to take into account resource and budget constraints.

(c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

3. If the results of the negotiations related to Article VI:4 of GATS (or the results of any similar negotiations undertaken in other multilateral fora in which both Parties participate) enter into effect, this Article shall be amended, as appropriate, after consultations between the Parties, to bring those results into effect under this Agreement. The Parties agree to coordinate on such negotiations as appropriate.

Article 11.9: Mutual Recognition

1. For the purposes of the fulfillment, in whole or in part, of its standards or criteria for the authorization, licensing, or certification of services suppliers, and subject to the requirements of paragraph 4, a Party may recognize the education or experience obtained, requirements met, or licenses or certifications granted in a particular country. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.

2. Where 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 a non-Party, nothing in Article 11.3 shall be construed to require the Party to accord such recognition to the education or experience obtained, requirements met, or licenses or certifications granted in the territory of the 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 for the other Party, if the other Party is interested, to negotiate its accession to such an agreement or arrangement or to negotiate comparable ones with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that education, experience, licenses, or certifications obtained or requirements met in that other Party's territory should be recognized.

4. A Party shall not accord recognition in a manner which would constitute a means of discrimination between countries in the application of its standards or criteria for the authorization, licensing, or certification of services suppliers, or a disguised restriction on trade in services.

5. Annex 11.9 applies to measures adopted or maintained by a Party relating to the licensing or certification of professional service suppliers as set out in the provisions of that Annex.

Article 11.10: Implementation

The Parties shall consult annually, or as otherwise agreed, to review the implementation of this Chapter and consider other trade in services issues of mutual interest. Among other issues, the Parties will consult 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 services suppliers. Such consultations will also include consideration of the development of procedures that could contribute to greater transparency of measures described in Article 11.6(1)(c).

Article 11.11: Denial of Benefits

1. A Party may deny the benefits of this Chapter to a service supplier of the other Party if the service is being supplied by an enterprise owned or controlled by nationals of a non-Party, and the denying Party:

(a) does not maintain diplomatic relations with the non-Party; or

(b) 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.

2. Subject to Article 22.4 (Consultations), a Party may deny the benefits of this Chapter to:

(a) service suppliers of the other Party where the service is being supplied by an enterprise that is owned or controlled by persons of a non-Party and the enterprise has no substantial business activities in the territory of the other Party, or

(b) service suppliers of the other Party where the service is being supplied by an enterprise that is owned or controlled by persons of the denying Party and the enterprise has no substantial business activities in the territory of the other Party.

Article 11.12: Definitions

For 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 one Party into the territory of the other Party;

(b) in the territory of one Party by a person of that Party to a person of the other Party; or

(c) by a national of a Party in the territory of the other Party,

but does not include the supply of a service in the territory of a Party by an investor of the other Party as defined in Article 10.27 (Investment-Definitions) or a covered investment;

enterprise means an "enterprise" as defined in Article 2.1 (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 trades-persons or vessel and aircraft crew members;

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 non-transportation air services, such as aerial fire-fighting, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, and helicopter-lift for logging and construction, and other airborne agricultural, industrial, and inspection services.

Annex 11.6

Express Delivery

1. The Parties affirm that measures affecting express delivery services are subject to the provisions of this Agreement.

2. For purposes of this Agreement, express delivery services shall be defined as the expedited collection, transport, delivery, tracking, and maintaining control of documents, printed matter, parcels, and/or other goods throughout the supply of the service.

3. The Parties express their desire to maintain the level of open market access existing on the date this Agreement is signed.

4. Chile agrees that it will not impose any restrictions on express delivery services which are not in existence on the date this Agreement is signed. Chile confirms that it has no intention to direct revenues from its postal monopoly to benefit express delivery services as defined in paragraph 2.

Annex 11.9

Professional Services

Section A - General Provisions

Development of Professional Standards

1. 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.

2. The standards and criteria referred to in paragraph 1 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.

3. On receipt of a recommendation referred to in paragraph 1, 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

4. 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 the other Party.

Review

5. The Commission shall periodically, and at least once every three years, review the implementation of this Section. The Commission shall include within the scope of its review any differences in regulatory approaches between the Parties. Among other issues, a Party may raise issues connected with the development of international standards of relevant international organizations related to professional services.[8]

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 to Annex I or II and subject to any non-conforming measures therein, ensure that a national of the other 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 11.9; and

(c) other matters relating to the provision of foreign legal consultancy services.

[8] The term "relevant international organizations" refers to international bodies whose membership is open to the relevant bodies of at least both Parties.

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 the other Party 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, non-conforming measures 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 the other 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 Party 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 paragraphs 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 11.9-C applies to the Parties specified therein.

Appendix 11.9-C

Civil Engineers

The rights and obligations of Section C of Annex 11.9 apply to Chile with respect to civil engineers (“ingenieros civiles”) and to such other engineering specialties that Chile may designate.