

CHAPTER 12

TRADE IN SERVICES

Article 12.1: Definitions

For the purposes of this Chapter:

commercial presence means any type of business or professional establishment, including through:

(a)

the constitution, acquisition or maintenance of a legal person; or

(b)

the creation or maintenance of a branch or a representative office, within the territory of a Party for the purpose of supplying a service;

enterprise means an enterprise as defined in Article 2.1 (Definitions of General Application), and a branch of an enterprise;

measures adopted or maintained by a Party means measures adopted or maintained by:

(a)

central or local governments and authorities; and

(b)

non-governmental bodies in the exercise of powers delegated by central or local governments or authorities.

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, including commercial presence in its 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;

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;

12-1

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

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;

state enterprise means an enterprise that is owned, or controlled through ownership interests, by a Party;

trade in services or supply of services means the supply of a service:

(a)

from the territory of one Party into the territory of another Party (“crossborder mode”);

(b)

in the territory of one Party by a person of that Party to a person of another Party (“consumption abroad mode”);

(c) by a service supplier of one Party, through commercial presence in the

territory of another Party (“commercial presence mode”); or

(d) by a national of a Party in the territory of another Party (“presence of natural persons mode”).

Article 12.2: Objectives

The objectives of this Chapter are to facilitate expansion of trade in services on a mutually advantageous basis, under conditions of transparency and progressive liberalisation, while recognising the rights of Parties to regulate services, including to introduce new regulations, and the role of governments in providing and funding public services, giving due respect to national policy objectives including where these reflect local circumstances.

Article 12.3: Scope

1. This Chapter shall apply to measures adopted or maintained by a Party affecting trade in services.

2. This Chapter shall not apply to:

(a)

financial services as defined in Annex 12.A;

12-2

(b)

government procurement, which means any law, regulation, policy, or procedure of general application governing the procurement by governmental agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale;¹

(c)

services supplied in the exercise of governmental authority;

(d)

subsidies or grants provided by a Party or a state enterprise,² or any

conditions attached to the receipt or continued receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to domestic services, service consumers or service suppliers;

(e)

measures affecting natural persons seeking access to the employment market of a Party; or

(f)

measures regarding citizenship, nationality, residence or employment on a permanent basis.

3. This Chapter shall not apply to air transport services, whether scheduled or non-scheduled, or to related services in support of air services,³ other than the following:

(a)

aircraft repair and maintenance services during which an aircraft is withdrawn from service;

(b)

the selling and marketing of air transport services;

(c)

computer reservation system services;

(d)

speciality air services; and

(e)

international air transportation services as set out in the Multilateral Agreement on the Liberalisation of International Air Transportation (MALIAT), and, to the extent that there are any inconsistencies between this Agreement and those of the MALIAT, the rights and obligations

under the MALIAT at any given time shall prevail.

4. Nothing in this Chapter shall prevent a Party from applying measures to regulate the entry of natural persons of another Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and

1 In the event of any inconsistency between this Chapter and Chapter 11 (Government Procurement) the latter Chapter shall prevail to the extent of the inconsistency.

2 This includes government supported loans, guarantees, and insurance.

3 For example, ground handling services.

12-3

o ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to that other Party under the terms of this Chapter. The sole fact of requiring a visa for natural persons of certain countries and not for those of others shall not be regarded as nullifying benefits under this Chapter.

Article 12.4: National 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 its own services and service suppliers.

Article 12.5: 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 a non-Party.

Article 12.6: Market Access

No Party shall, either on the basis of a regional subdivision or on the basis of its entire territory, adopt or maintain:

(a)

limitations on the number of service suppliers whether in the form of

numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;

(b)

limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(c)

limitations on the total number of service operations or on 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;⁴

(d)

limitations on 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; and

⁴ This paragraph does not cover measures of a Party which limit inputs for the supply of services.

12-4

(e)

measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

Article 12.7: Local Presence

No Party may 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 supply of a service.

Article 12.8: Non-conforming Measures

1.

Articles 12.4, 12.5, 12.6 and 12.7 shall 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 III, or

(ii)

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 12.4, 12.5, 12.6 and 12.7.

2. Articles 12.4, 12.5, 12.6 and 12.7 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 IV.

Article 12.9: Review

The Parties shall consult within two years of entry into force of this

Agreement and at least every three years thereafter, or as otherwise agreed, to

review the implementation of this Chapter and consider other trade in services

issues of mutual interest, with a view to the progressive liberalisation of the trade in

services among them on a mutually advantageous basis.

12-5

Article 12.10: 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.

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 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;

(b)

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

(c)

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.

4. Where a Party requires authorisation 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 authorisation requirements that are within the scope of

Article 12.8(2).

5. If the results of the negotiations related to Article VI:4 of GATS (or the results of any similar negotiations undertaken in other multilateral forums in which the Parties participate) enter into effect, the Parties shall jointly review these results with a view to their incorporation in this Agreement. The Parties agree to coordinate on such negotiations as appropriate.

Article 12.11: Professional Qualifications and Registration

1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing, or certification of service suppliers, and subject to the requirements of Paragraph 4, a Party may recognise the education
12-6
or experience obtained, requirements met, or licenses or certifications granted in a particular Party or non-Party.
2. Where a Party recognises, 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 12.5 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 another 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 another Party, upon request, 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 another Party to demonstrate that education, experience, licenses, 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 which would constitute a means of discrimination between countries 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 12.B, the Parties agree to facilitate the establishment of dialogue among their regulators and/or relevant industry bodies with a view to the achievement of early outcomes on recognition of professional qualifications and/or professional registration. Such outcomes may be achieved through harmonisation, recognition of regulatory outcomes, recognition of professional qualifications and professional registration awarded by one Party as a means of complying with the regulatory requirements of another Party whether accorded unilaterally or by mutual arrangement, including where appropriate through an Implementing Arrangement.

6. The initial priority areas for work on professional qualification and professional recognition requirements are engineers, architects, geologists, geophysicists, planners, and accountants. The priority areas and the recognition outcomes achieved on priorities shall be reviewed within the time periods set out in Article 12.9.

Article 12.12: Denial of Benefits

Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to:

12-7

(a)

service suppliers of another 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 substantive business operations in the territory of any Party; or

(b)

service suppliers of another 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 substantive business operations in the territory of any Party.

Article 12.13: Transparency

1. Each Party shall publish promptly or otherwise make publicly available international agreements pertaining to or affecting trade in services to which it is a signatory.
2. Each Party shall respond promptly to all requests by any other Party for specific information on any of its measures of general application which pertain to or affect the operation of this Chapter or international agreements within the meaning of Paragraph 1.
3. Each Party shall also designate one or more enquiry points to provide specific information to the other Parties, upon request, on all such matters.

Article 12.14: Subsidies

Notwithstanding Article 12.3, the Parties shall review the issue of disciplines on subsidies related to trade in services in the light of any disciplines agreed under Article XV of GATS with a view to their incorporation into this Agreement.

Article 12.15: Payments and transfers

Except as provided in Annex 12.C, each Party shall permit all payments and transfers for current transactions and capital movements, with regard to trade in services.

12-8

Annex 12.A

Financial service means any service of a financial nature. Financial services include all insurance and insurance-related services, and all banking and other

financial services (excluding insurance), as well as services incidental or auxiliary to a service of a financial nature. Without limiting this definition, financial services include the following activities:

Insurance and insurance-related services

(a)

direct insurance (including co-insurance):

(i) life,

(ii) non-life;

(b)

reinsurance and retrocession;

(c)

insurance intermediation, such as brokerage and agency;

(d)

services auxiliary to insurance, such as consultancy, actuarial, risk assessment, and claim settlement services.

Banking and other financial services (excluding insurance)

(e)

acceptance of deposits and other repayable funds from the public;

(f)

lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transactions;

(g)

financial leasing;

(h)

all payment and money transmission services, including credit, charge and debit cards, travellers cheques, and bankers drafts;

(i)

guarantees and commitments;

(j)

trading for own account or for account of customers, whether on an exchange, in an over-the-counter market, or otherwise, the following:

(i)

money market instruments (including cheques, bills, certificates of deposits,

(ii)

foreign exchange,

(iii)

derivative products including, futures and options,

12-9

(iv)

exchange rate and interest rate instruments, including products such as swaps, forward rate agreements,

(v)

transferable securities, or

(vi)

other negotiable instruments and financial assets, including bullion;

(k)

participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;

(l)

money broking;

(m)

asset management, such as cash or portfolio management, all forms of

collective investment management, pension fund management,
custodial, depository, and trust services;

(n)

settlement and clearing services for financial assets, including
securities, derivative products, and other negotiable instruments;

(o)

provision and transfer of financial information, and financial data
processing and related software by suppliers of other financial services;

and

(p)

advisory, intermediation, and other auxiliary financial services on all the
activities listed in Subparagraphs (e) through (o), including credit
reference and analysis, investment and portfolio research and advice,
advice on acquisitions and on corporate restructuring and strategy.

12-10

Annex 12.B

Professional Services

Development of Professional Standards

1. Professional services means services, the provision of which requires
specialised 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.

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

12-11

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 the other Party.

Review

6. Subject to Article 12.11(6), the Commission shall review the implementation of this Annex. 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 organisations related to professional services.⁵

⁵ The term “relevant international organisations” refers to international bodies whose membership is

open to the relevant bodies of at least two Parties.

12-12

Annex 12.C

Payments and Transfers

Chile

With respect to its obligations under Article 12.15 (Payments and Transfers), Chile reserves:

1. The right, without prejudice to Paragraph 3 of this Annex, to maintain existing requirements that transfers from Chile of proceeds from the sale of all or any part of an investment of an investor of a Party⁶ or from the partial or complete liquidation of the investment may not take place until a period not to exceed:

(a)

in the case of an investment made pursuant to Decree Law 600 Foreign

Investment Statute (Decreto Ley 600, Estatuto de la Inversion Extranjera), one year has elapsed from the date of transfer to Chile; or

(b)

in the case of an investment made pursuant to Law 18.657 Foreign Capital Investment Fund Law (Ley 18.657, Ley Sobre Fondo de Inversiones de Capitales Extranjeros), five years have elapsed from the date of transfer to Chile;

2. The right to adopt measures, consistent with this Annex, establishing future special voluntary investment programs in addition to the general regime for foreign investment in Chile, except that any such measures may restrict transfers from Chile of proceeds from the sale of all or any part of an investment of an investor of another Party or from the partial or complete liquidation of the investment for a period not to exceed five years from the date of transfer to Chile; and

3. The right of the Central Bank of Chile to maintain or adopt measures in conformity with the Constitutional Organic Law of the Central Bank of Chile (Ley Orgánica Constitucional del Banco Central de Chile, Ley 18.840 – hereinafter Law 18.840) or other legislation, in order to ensure currency stability and the normal operation of domestic and foreign payments. For this purpose, the Central Bank of Chile is empowered to regulate the supply of money and credit in circulation and international credit and foreign exchange operations. The Central Bank of Chile is empowered as well to issue regulations governing monetary, credit, financial, and foreign exchange matters. Such measures include, inter alia, the establishment of restrictions or limitations on current payments and transfers (capital movements) to or from Chile, as well as transactions related to them, such as requiring that deposits, investments or credits from or to a foreign country, be subject to a reserve requirement (“encaje”).

6 Investment of an investor of a Party, refers to a commercial presence of a service supplier of a

Party.

12-13

Notwithstanding the above, the reserve requirement that the Central Bank of Chile can apply pursuant to Article 49 No. 2 of Law 18.840, shall not exceed 30 per cent of the amount transferred and shall not be imposed for a period which exceeds two years.

4. When applying measures under this Annex, Chile, as established in its legislation, shall not discriminate between the Parties to this Agreement and any non-Party with respect to transactions of the same nature.

12-14

Annex 12.D

DL 600

Chile

1. It is understood that this Chapter does not limit the right of the Foreign Investment Committee to regulate the terms and conditions of any investment contract under the Foreign Investment Statute, Decree Law 600. Furthermore, it is also understood that the Foreign Investment Committee is not obliged to enter into investment contracts.

2. For greater certainty, commercial presence established in Chile under the terms and conditions set out in an investment contract shall be subject to the rights and obligations of this Chapter from the date of transfer pursuant to the investment contract. Execution of an investment contract under DL 600 by a service supplier of another Party does not create any right on the part of the service supplier to engage in particular activities in Chile.

12-15