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CHAPTER 9

SERVICES AND INVESTMENT

SECTION C

CROSS-BORDER TRADE IN SERVICES

ARTICLE 9.12

Scope

This Chapter shall apply to measures of 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 or delivery of a service;
- (b) the purchase or use of, or payment for, a service; and
- (c) the access to and use of distribution, transport or telecommunications networks and services in connection with the supply of a service.

ARTICLE 9.13

Market Access

A Party shall not adopt or maintain, either on the basis of its entire territory or [on the basis of a territorial sub-division], a measure that:

- (a) imposes limitations on:
 - (i) the number of service suppliers, whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements 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 service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test; or
- (b) restricts or requires specific types of legal entity or joint venture through which a service supplier may supply a service.

ARTICLE 9.14

National Treatment

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

ARTICLE 9.15

Most Favoured Nation Treatment

1. Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords, in like situations, to services and service suppliers of a third country.
2. Paragraph 1 shall not be construed as obliging a Party to extend to services or service suppliers of the other Party the benefit of any treatment resulting from measures providing for recognition¹, including of the standards or criteria for the authorisation, licencing, or certification of a natural person or enterprise to carry out an economic activity, or of prudential measures as referred to in paragraph 3 of the GATS Annex on Financial Services or Article 5.XX (Financial Services – Recognition).
3. Substantive obligations in other international agreements concluded by a Party with a third country, do not in themselves constitute treatment under this Article. Measures of a Party in relation to those obligations can constitute treatment and thus can give rise to a breach of this Article.²

¹ The Parties affirm their rights and obligations under Article VII of the GATS regarding measures providing for recognition of the education or experience obtained, requirements met, or licenses or certifications granted in a particular country.

² For greater certainty, the process of implementing those obligations into domestic law, to the extent that it is necessary in order to incorporate them into the domestic legal order, does not in itself qualify as a measure.

ARTICLE 9.16

Local Presence

Neither Party shall 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 9.17

Non-Conforming Measures

1. Articles 3.2 (Market Access), 3.3 (National Treatment), [3.4 (Most Favoured Nation Treatment)] or 3.5 (Local Presence) shall not apply to:

- (a) any existing non-conforming measure that is maintained by a Party at the level of:
 - (i) for the European Union:
 - (a) the European Union, as set out in its Schedule to Annex I;
 - (B) the central government of a Member State of the European Union, as set out in its Schedule to Annex I Annex I;
 - (C) a regional government of a Member State of the European Union, as set out in its Schedule to Annex I; or
 - (D) a local government, other than that referred to in subparagraph (C); and
 - (ii) for Australia:
 - (A) the central government, as set out in its Schedule to Annex I;
 - (B) a regional government, as set out in its Schedule to Annex I; or
 - (C) a local government;
- (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
- (c) a modification of any non-conforming measure referred to in subparagraphs (a) and (b) to the extent that the modification does not decrease the conformity of the measure, as it existed immediately before the modification, with Articles 3.2 (Market Access), 3.3 (National Treatment), 3.5 (Local Presence), or [3.4 (Most Favoured Nation Treatment)].

2. Articles 3.2 (Market Access), 3.3 (National Treatment), [3.4 (Most Favoured Nation Treatment)] or 3.5 (Local Presence) shall not apply to any measure of a Party with respect to sectors, subsectors or activities, as set out in its Schedule to Annex II.