

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, payment or use of 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) services associated with energy and basic petrochemical goods to the extent provided in Chapter Six (Energy and Basic Petrochemicals); and
- (c) air services, including domestic and international air transportation, whether scheduled or non-scheduled, and related activities 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 - (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service, and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.

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 such access or employment;
- (b) impose any obligation or confer any right on a Party with respect to any procurement by a Party or a state

enterprise;

(c) impose any obligation or confer any right on a Party with respect to subsidies and grants, including government-supported loans, guarantees and insurance provided by a Party or a state enterprise; or

(d) 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 such state or province to service providers of the Party of 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 another Party or of a non-Party.

Article 1204: Non-Discriminatory Treatment

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

Article 1205: Local Presence

A Party shall not require a service provider of another Party to establish or maintain a representative office, branch 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 described 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 described by a Party in its Schedule to Annex I, 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. A Party shall have two years from the date of entry into force of this Agreement to describe in its Schedule to Annex I any existing non-conforming measure maintained by a state or province.

3. A Party shall not be required to describe in its Schedule to Annex I any existing non-conforming measure that is maintained by a local government.

4. To the extent indicated by a Party in its Schedule to Annex II, Articles 1202, 1203 and 1205 do not apply to any measure adopted or maintained by a Party with respect to the sectors, subsectors or activities described therein.

Article 1207: Quantitative Restrictions

1. The Parties shall periodically, but in any event at least every two years, endeavor to negotiate the liberalization or removal of:

(a) any existing quantitative restrictions maintained by

(i) a Party at the federal level, as described in its Schedule to Annex V, or

(ii) a state or province, as described by a Party in its Schedule to Annex V; and

(b) any quantitative restriction adopted by a Party after the date of entry into force of this Agreement.

2. Each Party shall have one year from the date of entry into force of this Agreement to describe in its Schedule to Annex V any quantitative restriction maintained by a state or province.

3. Each Party shall notify the other Parties of any quantitative

restriction that it adopts or amends after the date of entry into force of this Agreement and shall describe any such quantitative restriction in its Schedule to Annex V.

4. A Party shall not be required to describe in its Schedule to Annex V, or to notify, any quantitative restriction adopted or maintained by a local government.

Article 1208: Liberalization of Non-Discriminatory Measures

Each Party shall describe in its Schedule to Annex VI commitments to liberalize quantitative restrictions, licensing requirements, performance requirements or other non-discriminatory measures relating to the cross-border provision of a service.

Article 1209: Procedures

The Commission shall establish procedures for:

(a) the notification and description by a Party of

(i) state or provincial measures that it intends to describe in its Schedule to Annex I pursuant to Article 1206(2),

(ii) quantitative restrictions that it intends to describe in its Schedule to Annex V pursuant to Article 1207(2),

(iii) commitments that it intends to describe in its Schedule to Annex VI pursuant to Article 1208, and

(iv) amendments of measures in accordance with Article 1206(1)(c); and

(b) consultations between Parties with a view to removing any state or provincial measure described by a Party in its Schedule to Annex I after the date of entry into force of this Agreement.

Article 1210: Licensing and Certification

1. With a view to ensuring that any measure adopted or maintained by a Party relating to the licensing and 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 restriction on the cross-border provision of a service.

2. Notwithstanding Article 1203, a Party shall not be required to extend to a service provider of another Party the benefits of recognition of education, experience, licenses or certifications obtained in another country, whether such recognition was accorded unilaterally or by arrangement or agreement with that other country. The Party according such recognition shall afford any interested 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 negotiate and enter into an agreement or arrangement of comparable effect.

3. Two years after the date of entry into force of this Agreement, a Party shall eliminate any citizenship or permanent residency requirement for the licensing and certification of professional service providers in its territory. Where a Party does not comply with this provision with respect to a particular sector, any other Party may maintain an equivalent requirement or reinstate any such requirement eliminated pursuant to this Article, only in the affected sector, for such period as the non-complying Party retains the requirement.

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 and certification of nationals of the other Parties.

5. Each Party shall implement the provisions of Annex 1210.

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) such 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 has imposed measures against the non-Party that prohibit transactions with such enterprise or that would be violated or circumvented by the activities of such enterprise; and

(b) with respect to the cross-border provision of a transportation service covered by this Chapter, the service 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), respectively, a Party may deny the benefits of this Chapter to a service provider of another Party where the Party establishes that such service is being provided by an enterprise of another Party that is owned or controlled by persons of a non-Party and that has no substantial business activities in the territory of any Party.

3. The Party denying benefits pursuant to paragraph 1 or 2 shall have the burden of establishing that such action is in accordance with such paragraph.

Article 1212: Sectoral Annex

Each Party shall comply with Annex 1212.

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 such government.

2. For purposes of this Chapter:

cross-border trade in services or cross-border provision of a service 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 person 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 1138 (Investment - Definitions), in that territory;

enterprise means "enterprise" as defined in Article 201, except that it shall also include a branch;

enterprise of a Party means an enterprise constituted or organized under the laws and regulations of a Party, including a branch;

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 measures adopted or maintained by a Party, but does not include services provided by trades-persons and 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 numerical quota, monopoly or a requirement for 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 the requirement of an economic needs test or by any other quantitative means;

service provider of a Party means a person of a Party that 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

Professional Services

Section A - General Provisions

Scope and Coverage

1. This Annex applies to measures adopted or maintained by a Party relating to the licensing and certification of professional service providers.

Processing of Applications for Licenses and Certification

2. Each Party shall ensure that its competent authorities, within a reasonable period after the submission of an application for licensing or certifications by a national of another Party:

(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 its domestic law.

Development of Mutually Acceptable Professional Standards and Criteria

3. The Parties shall encourage the relevant bodies in their respective territories to develop mutually acceptable professional

standards and criteria for licensing and certification of professional service providers and to provide recommendations on mutual recognition to the Commission.

4. Such standards and criteria may be developed with regard to the following matters:

(a) education - accreditation of schools or academic programs where professional service providers obtain formal education;

(b) examinations - qualifying examinations for the purpose of licensing professional service providers, including alternative methods of assessment such as oral examinations and interviews;

(c) experience - length and nature of experience required for a professional service provider to be licensed;

(d) conduct and ethics - standards of professional conduct and the nature of disciplinary action for non-conformity with those standards by professional service providers;

(e) professional development and re-certification - continuing education for professional service providers, and ongoing requirements to maintain professional certification;

(f) scope of practice - extent of, or limitations on, field of permissible activities of professional services providers;

(g) territory-specific knowledge - requirements for knowledge by professional service providers of such matters as local laws, regulations, language, geography or climate; and

(h) consumer protection - alternatives to residency, including bonding, professional liability insurance and client restitution funds to provide for the protection of consumers of professional services.

5. Upon receipt of the recommendations of the relevant bodies, the Commission shall review the recommendations within a reasonable period to determine whether they are consistent with this Agreement.

6. Based upon the Commission's review, the Parties shall encourage their respective competent authorities, where appropriate, to adopt those recommendations within a mutually agreed period.

Temporary Licensing

7. Where the Parties agree, each Party shall encourage the relevant bodies in its territory to develop procedures for

temporary licensing of professional service providers of another Party.

Review

8. The Commission shall periodically, and at least once every three years, review progress in the implementation of this Annex.

Section B - Foreign Legal Consultants

1. In implementing its commitments regarding foreign legal consultants, set out in its Schedules to Annexes I and VI in accordance with Article 1206 and 1208, each Party shall ensure, subject to its reservations set out in its Schedules to Annexes I and II in accordance with Article 1206, that a foreign legal consultant is permitted to practice or advise on the law of the country in which such consultant is authorized to practice as a lawyer.

Consultations With Relevant Professional Bodies

2. Each Party shall undertake consultations with its relevant professional bodies for the purpose of obtaining their recommendations on:

(a) the forms of association and 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) any other issues related to the provision of foreign legal consultancy services.

3. Each Party shall encourage its relevant professional bodies to meet with the relevant professional bodies designated by each of the other Parties to exchange views regarding the development of joint recommendations on the issues described in paragraph 2 prior to initiation of consultations under that paragraph.

Future Liberalization

4. Each Party shall establish a work program aimed at developing common procedures throughout its territory for the licensing and certification of lawyers licensed in the territory of another Party as foreign legal consultants.

5. With a view to meeting this objective, each Party shall, upon receipt of the recommendations of the relevant professional bodies, encourage its competent authorities to bring applicable measures into conformity with such recommendations.

6. Each Party shall report to the Commission within one year

after the date of entry into force of this Agreement, and each year thereafter, on progress achieved in implementing the work program.

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

(a) assessing the work that has been done under paragraphs 2 through 6;

(b) as appropriate, amending or removing the remaining reservations on foreign legal consultancy services; and

(c) determining any future work that might be appropriate relating to foreign legal consultancy services.

Section C - Temporary Licensing of Engineers

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

2. With a view to meeting this objective, each Party shall undertake consultations with its relevant professional bodies for the purpose of obtaining their recommendations on:

(a) the development of procedures for the temporary licensing of engineers licensed in the territory of another Party to permit them to practice their engineering specialties in each jurisdiction in its territory that regulates engineers;

(b) the development of model procedures, in conformity with Article 1210 and Section A of this Annex, for adoption by the competent authorities throughout its territory to facilitate the temporary licensing of engineers;

(c) the engineering specialties to which priority should be given in developing temporary licensing procedures; and

(d) any other issues relating to the temporary licensing of engineers identified by the Party through its consultations with the relevant professional bodies.

3. The relevant professional bodies shall be requested to make recommendations on the matters specified in paragraph 2 to their respective Parties within two years after the date of 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 expeditious development of joint recommendations on matters

specified in paragraph 2. The relevant professional bodies shall be encouraged to develop such recommendations within two years after 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 such recommendations.

5. Upon receipt of the recommendations described in paragraphs 3 and 4, the Parties shall review them to ensure their consistency with the provisions of the Agreement and, if consistent, encourage their respective competent authorities to implement such recommendations within one year.

6. Pursuant to paragraph 5 of Section A, within two years after the date of entry into force of this Agreement, the Commission shall review progress made in implementing the objectives set out in this Section.

7. Appendix 1210-C shall apply to engineering specialties.

ANNEX 1212

Land Transportation

Contact Points for Land Transportation Services

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

Review Process for Land Transportation Services

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

(a) the effectiveness of such liberalization;

(b) specific problems for, or unanticipated effects on, each Party's bus and truck transportation industry arising from such liberalization; and

(c) modifications to such period of liberalization.

The Commission shall endeavor to resolve in a mutually satisfactory manner any matter arising from its consideration of such reports.

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

possibilities for further liberalization commitments.

Appendix 1210 - C

Civil Engineers

Mexico will undertake the commitments of this Section only with respect to civil engineers ("ingenieros civiles").