

**Transatlantic Trade and Investment Partnership
Cross-Border Trade in Services Text Consolidation
November 30, 2015**

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Disclaimer: The Parties reserve the right to make subsequent modifications to this text and to complement its proposal at a later stage, by modifying, supplementing or withdrawing all, or any part, at any time.

This consolidated text is without prejudice to the architecture of the final agreement.

This consolidated text focuses on the core text of cross-border trade services.

Chapter {X}

Cross-Border Trade in Services

Article X.1: Definitions

Note: without prejudice to placement

[EU: 'cross-border supply of services' means the supply of a service:

- (i) from the territory Party into the territory of the other Party
- (ii) in the territory of a Party to the service consumer of the Party]

Note: The EU has proposed a Chapter on Entry and Temporary Stay of Natural Persons for business Purposes (Chapter IV).

[US: **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 through a covered investment;]

[EU: an 'enterprise' means a juridical person, branch or representative office set up through establishment, as defined under this article;]

[US: **enterprise** means an 'enterprise' as defined in Article XX.XX (Definitions of General Application), and a branch of an enterprise;]

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

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[US: service of a Party means a person of that Party that seeks to supply or supplies a service¹;

[EU: 'service supplier' of a Party means any natural or juridical person of a Party that seeks to supply or supplies a service]

[US: specialty air services means any non-transportation air services, such as aerial firefighting, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, and helicopter lift work for logging and construction, and other airborne agricultural, industrial, and inspection services.]

[EU: 'subsidiary' of a juridical person of a Party means a juridical person which is effectively controlled by another juridical person of that Party²;

[EU: a 'natural person of the EU' means a national of one of the Member States of the EU according to its legislation³ and a 'natural person of the US' means a national of the US according to its legislation;]

[EU: 'juridical person' means any legal entity duly constituted or otherwise organized under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship, or association;]

[EU: a 'juridical person of the EU' or a 'juridical person of the US' means a juridical person set up in accordance with the laws of the Member States of the EU or of the US and engaged in substantive business operations⁴ in the territory of the EU or of the US, respectively;]

[EU: Notwithstanding the preceding paragraph, shipping companies established outside the EU or US and controlled by nationals of a Member State of the EU or of the US, respectively, shall also be beneficiaries of the provisions of this title, with the exception of Chapter II section (2) [Investment Protection] if their vessels are registered in accordance with their respective legislation, in that Member State, or in the US, and fly the flag of a Member State of the US;]

[EU: a 'measure' means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;]

Note: The EU has also tabled a text on International Maritime Transport Services (Chapter V,

1 **[US: ¹** For the purposes of Article X.{4} (National Treatment) and X.{5}(Most-favored Nation Treatment), 'service suppliers' has the same meaning as 'service and service suppliers' as used in Articles II and XVII of the GATS.]

2 **[EU: ²** A juridical person is controlled by another juridical person if the latter has the power to name a majority of its directors or otherwise to legally direct its actions.]

3 **[EU: ³** The definition of natural person also includes natural persons permanently residing in the Republic of Latvia who are not citizens of the Republic of Latvia or any other state but who are entitled, under laws and regulations of the Republic of Latvia, to receive a non-citizen's passport.]

4 **[EU: ⁴** In line with its notification of the Treaty establishing the European Community to the WTO (WT/REG 39/1), the EU understands that the concept of 'effective and continuous link' with the economy of a Member State of the EU enshrined in Article 54 of the TFEU is equivalent to the concept of 'substantive business operations'. Accordingly, for a juridical person set up in accordance with the laws of the US and having only its registered office or central administration in the territory of the US, the EU shall only extend the benefits of this agreement if that juridical person possesses an effective and continuous economic link with the territory of the US.]

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Section VII).

Article X.2: Scope [US: and Coverage]

1. This Chapter applies to measures [EU: of the Parties] [US: adopted or maintained by a Party] affecting [EU: the] cross-border [EU: supply of] [US: trade in] services [EU: in all services sectors] [US: 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 telecommunication networks and services in connection with the supply of a service; and
- (d) the provision of a bond or other form of financial security as a condition for the supply of a service].

[EU: 2. The provisions of this Chapter shall not apply to audio-visual services]

[EU: 3. Subsidies shall be dealt with in Chapter {X (on competition and state aid)} and the provisions of this chapter shall not apply to subsidies granted by the Parties.]

[US: Notwithstanding paragraph 1, this Chapter does not apply to:

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

[EU: 4. Government procurement shall be dealt with in Chapter {X on public procurement}. And nothing in this shall be construed to limit the obligations of the Parties under Chapter X on public procurement or to impose any additional obligation with respect to government procurement.]

[US: Notwithstanding paragraph 1, this Chapter does not apply to:

- (b) government procurement;]

[US: 5. Notwithstanding paragraph 1,

- (a) Articles X. {3} (Market Access), X. {8} (Domestic Regulation), and X. {9} (Transparency in Developing and Applying Regulations) shall also apply to measures adopted or maintained by a Party affecting the supply of a service in its territory by a covered investment; and

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(b) Annex XX-A and Annex XX-B shall apply to measures adopted or maintained by a Party affecting the supply of certain services, including by a covered investment⁵.

6. Notwithstanding paragraph 1, this Chapter does not apply to:

(a) financial services as defined in Article XX.XX (Financial Services Chapter: definitions), except that paragraph {5} shall apply where the financial service is supplied by a covered investment that is not a covered investment in a financial institution (as defined in Article XX.XX (Financial Services Chapter: definitions) in the Party's territory;

(b) government procurement;

(c) 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; or

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

Note: The EU proposed a text on air transport services (Chapter V, Section VIII); see below.

[US: 7. 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.]

[US: 8. This Chapter does not apply to services supplied in the exercise of governmental authority in a Party's territory. 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.]

[EU: 'services' means any service in any sector except services supplied in the exercise of governmental authority]

[EU: 'services and activities performed in the exercise of governmental authority' means services or activities which are performed neither on a commercial basis nor in competition with one or more economic operators]

9. **[US: Nothing in this Chapter or any other provision of this Agreement shall be construed to impose any obligation on a Party regarding its immigration measures, including admission or conditions for temporary entry.]**

⁵ [US: For greater certainty, nothing in this Chapter, including this paragraph and Annexes XX-A and XX-B, is subject to investor-state dispute settlement pursuant to Section B of Chapter XX (Investment).]

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[EU: This Title shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding citizenship, residence, or employment on a permanent basis.]

Nothing in this Title shall prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to 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 benefits⁶ accruing to any Party under the terms of a specific commitment in this Title and its Annexes.]

[US:10. 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.]

[EU: 'measures adopted or maintained by a Party' means measures taken by:

- (i) governments and authorities at all levels; and
- (ii) non-governmental bodies in the exercise of powers delegated by governments or authorities at all levels.]

Article X.3 : Market Access

[EU: In sectors or subsectors where market access commitments are undertaken, neither Party shall] [US: Neither Party may] adopt or maintain [EU: with regards to market access through the cross-border supply of services], either on the basis of [EU: its entire territory or on the basis of a territorial sub-division] [US: 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 services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test; [US:⁷] or

6 [EU: ⁶ The sole fact of requiring a visa for a natural persons of certain countries and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.]

7 [US: This clause does not cover measures of a Party that limits inputs for the supply of services.]

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[US: (iv) the total number of natural persons that may be employed in a particular service sector or that a service suppliers 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 a 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 X.4: National Treatment^[EU:8]

1. Each Party shall accord to [EU: services and] service suppliers of the other Party [EU: , in respect of all measures affecting the cross-border supply of services,] treatment no less favorable than [EU: the treatment] [US: that] it accords, in like [EU: situations] [US: circumstances], to its own [EU: services and] service suppliers.]

[US: 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.]

[EU: 2. A Party may meet the requirement of paragraph 1 by according to services and service suppliers of the other Party either formally identical treatment or formally different treatment to that which it accords to its own like services and service suppliers.

3. Formally identical or formally different treatment shall be considered to be less favorable if it modifies the conditions of competition in favor of services or service suppliers of the Party compared to like services or service suppliers of the other Party.

4. Nothing in this Article shall be construed to require any Party to compensate for inherent services or service suppliers.]

Article X.5: Most-Favored Nation Treatment

1. Each Party shall accord to [EU: services and] service suppliers of the other Party [EU: , in respect of all measures affecting the cross-border supply of services,] treatment no less favorable than [US:that] [EU: the treatment] it accords, in like [EU: situations] [US: circumstances], to [EU: services and] service suppliers of [EU: any] [US: a] non-Party.

[EU: 2. Paragraph 1 shall not be construed to oblige a Party to extend to services and service suppliers of the other Party the benefit of any treatment resulting from:

(a) {reference to double taxation agreements in case not covered by horizontal provisions in the agreement}

8 [EU: For greater certainty, Article X. (National Treatment) shall also be interpreted in accordance with paragraphs x, y, z with respect to economic activities performed through establishment.]

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(b) measures providing for the recognition of qualifications, licenses, or prudential measures in accordance with the Article VII of the General Agreement on Trade in Services, or its Annex on Financial Services.]

Article X.6: [EU: Reservations and Exceptions] [US: Non-conforming Measures]

1. Article X.{4} (National Treatment) X.{5} (Most-favored Nation Treatment) [US:, X.{3} Market Access and X.{7} Local Presence] do not apply to:

(a) any existing non-conforming measure that is maintained by a Party at [EU: the level of:]

(i) [EU: the EU, as set out in its Annex I] [US: the central level of government, as set out by that Party in its Schedule to Annex I];

(ii) [EU: a national government, as set out by that Party in its Annex I]

(iii) [EU: regional government] [US: a regional level of government], as set out by that Party in its [US: Schedule to] Annex I; or

(iv) [EU: a local government] [US: 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 X. {4} (National Treatment), X.{5} (Most Favored Nation Treatment), [US: X. {3} (Market Access), or Article X.{7} (Local Presence)].

2. Articles X.{4} (National Treatment), X.{5} (Most Favored Nation Treatment), [US: X. {3} (Market Access), or Article X. {7} (Local Presence)] do not apply to [EU: measures] [US: any measure] that a Party adopts or maintains with respect to sectors, subsectors, or activities set out in its [US: Schedule to] Annex II.

[EU: 3. Article X (Market Access) does not apply to:

(a) any existing measure that is maintained by a Party at the level of a local government; the continuation or prompt renewal of such a non-conforming measure; or an amendment to such a measure to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment with Article X (Market Access).

(b) any measure that a Party adopts or maintains with respect to committed sectors or subsectors as set out in its Annex III.]

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[US: Article X.7: 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.]

Note: the EU includes provisions on the right to regulate in Art 1-1 Objectives, Coverage, and Definitions. The US has the relevant provisions in Art X.8 Domestic Regulation:

[US: Article X.8: Domestic Regulation

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 recognizing the right to regulate and to introduce new regulations on the supply of services in order to meet national policy objectives, each Party shall endeavor to ensure, as appropriate for individual sectors, that such measures 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.]

Note: US and EU to discuss consolidation of domestic regulation.

[EU: Article 1 -1 Objective, Coverage, and Definitions

The Parties, reaffirming their respective commitments under the WTO Agreement and their commitment to create a better climate for the development of trade and investment between the Parties, hereby lay down the necessary arrangements for the progressive reciprocal liberalization of trade in services, for the liberalization of investment, and for facilitation of e-commerce. Consistent with the provisions of this Title, each Party retains the right to adopt, maintain, and enforce measures necessary to pursue legitimate policy objectives such as protecting society, the environment and public health, consumer protection, ensuring the integrity and stability of the financial system, promoting public security and safety, and promoting and protecting cultural diversity.⁹]

[US: Article X.10: Recognition][EU: Section III: Mutual Recognition of Professional Qualifications]

Note: for further discussion.

⁹ [EU: EU reserves the right to make further proposals on the right to regulate in light of further developments relating to investment protection.]

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[US: Article X.11: Transfers and Payments

1. Each Party shall permit all transfers and payments relating 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 such transfers and payments relating to the cross-border supply of services to be made in a freely usable currency at the market rate of exchange prevailing 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 relating 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 offenses; or
 - (e) ensuring compliance with orders or judgments in judicial or administrative proceedings.]

[US: Article X.12: Denial of Benefits

1. A Party may deny the benefits of this Chapter to a service supplier of the other Party if the service supplier is an enterprise owned or controlled by persons 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 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 the other Party if the service supplier is an enterprise owned or controlled by persons of a non-Party or of the denying Party that has no substantial business activities on the territory of the other Party.]

Note: For EU see definition of service supplier, natural person, and juridical person.

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Article X.14: [EU: Review] [US: Implementation]

[EU: 1. With a view to further deepening the liberalization of cross-border supply of services, the Parties shall [X] years after the entry into force of this Agreement and at regular intervals thereafter, review the remaining restrictions on the cross-border supply of services, consistent with their commitments in international agreements.

2. In the context of the review referred to in paragraph 1, the Parties shall assess any obstacles to the cross-border supply of services that have been encountered. As a result of such review, the [body defined by the agreement] may decide to amend the relevant Annexes with specific commitments and reservations.]

[US: 1. The Parties shall consult annually, or as otherwise agreed, upon issues of mutual interest arising from the implementation of this Chapter.]

Note: EU addresses general exceptions through Chapter VII of this Title, US addresses general exceptions through General Exceptions.

[EU: SECTION VIII – AIR TRANSPORT SERVICES

Article 5 – 40

Scope, definitions and obligations

1. This Section sets out the principles regarding the liberalizations of air transport services pursuant to Chapter II Section 1 and Chapters III and IV of this Title.

2. Neither Party undertakes any obligation on domestic and international air transport services, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than:

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

'aircraft repair and maintenance services during which an aircraft is withdrawn from service' means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance.

(ii) the selling and marketing of air transport services;

'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, nor the applicable conditions.

(iii) computer reservation system (CRS) services;

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'computer reservation system (CRS) services' means services provided by computerized systems that contain information about air carriers' schedules, availability, fares, and fare rules, through which reservations can be made or tickets may be issued.

(iv) ground handling services;

'ground handling services' means the supply at an airport of the following services: airline representation, administration, and supervision; passenger handling; baggage handling; ramp services; catering; air cargo and mail handling; fueling of an aircraft, and aircraft servicing and cleaning; surface transport; flight operation, crew administration, and flight planning.

Ground handling services do not include security, aircraft repair and maintenance, or management or operation of essential centralized airport infrastructure such as deicing facilities, fuel distribution systems, baggage handling systems, and fixed intra-airport transport systems'

(v) airport operation services;

'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;

(vi) Rental of aircrafts with crew;

(vii) Ownership and control of air carriers.

3. In relation to the services indicated at point (i) up to (vi) above, each Party undertakes obligations subject to the reservations indicated in its Annex I, Annex II, and Annex III.

4. In relation to the ownership and control of air carriers (indicated at point (vii) above), each Party undertakes not to apply any limitation relating to ownership and control to natural persons or enterprises of the other Party, including for the purpose of granting an operating license for the operation of air transport services.