A paper submitted to participants by the European Union on 13 September 2012.

The EU proposes a list of Market access standards. As proposed by the EU, “participants commitments would substantially cover all sectors and modes”, and reflect the existing market access on a non-discriminatory basis. Existing “requirements of commercial presence” or “performance requirements” set by law should be “removed”.

Discussion paper
Market access standards

1 Objective

It is often contemplated that establishing clear negotiating modalities at the beginning of the DDA services negotiations could have significantly facilitated the negotiations. The plurilateral initiative offers the opportunity to design modalities which could address both the content and conduct of a plurilateral services negotiation.
Regarding market access, participants to the discussions about a plurilateral services initiative aim to include ambitious commitments in a potential agreement. Negotiations would be about binding existing liberalization to a high extent as well as improving actual market access with new commitments. Given that the level of liberalisation varies across sectors and among countries, the EU considers it important to establish standards for a plurilateral market access negotiation which would facilitate a balanced outcome. Such standards would also be helpful for enlarging the initial agreement to future participants, as they will constitute clear parameters of parties' expectations to new participants.
This discussion paper aims to discuss options for establishing market access standards for a plurilateral negotiation, which could become part of the modalities for a negotiation. Whereas the earlier EU discussion paper on how standstill and ratchet concepts could be incorporated into GATS- type schedules of commitments focused on technical scheduling aspects, this discussion paper addresses content questions.

2 Content of the standards

1. **Substantial coverage**
   As a starting point, participants' commitments would substantially cover all sectors[1] and modes.
2. **Modes 1-3: Binding of actual practice**
   Commitments should reflect existing levels of market access on a non-discriminatory basis. Options for the scheduling technique related to this standard were described in a previous contribution by the EU.
3. **Modes 1-3: Barriers to establishment**
   Where the following trade barriers, which had been identified in all plurilateral requests, exists in practice and/or legislation, they should be removed: foreign equity caps, joint venture requirements, economic needs tests.
4. **Modes 1-2: Requirements of commercial presence**
   Where the requirement of commercial presence for the provision of cross-border services exists in practice and/or legislation, they should be removed.
5. **Performance requirements**
   Where performance requirements exist in practice and/or legislation, they should be removed.

[1] Participants may want to agree on a common list of services sectors, e.g. an updated version of the W120 list, taking into account sectoral classification proposals made by WTO Members.

6. **Cross-cutting: national treatment post-establishment**
   There is no apparent reason why foreign subsidiaries should be treated differently than domestic companies, given that a host country has full regulatory control over foreign owned/controlled subsidiaries (unlike branches). Therefore, national treatment post-establishment could be a horizontal standard applicable to all mode 3 commitments.
7. **Mode 4**
   Participants should make new or improved commitments regarding the temporary entry and stay of the following mode 4 categories: Intra-corporate Transferees, Business Visitors, Contractual Services Suppliers and Independent Professionals. As commitments on Intra- corporate Transferees underpin mode 3 commitments, they should be made for all committed (sub)sectors.

3 Using the standards in market access negotiations

3.1 Approach to the negotiations

Participants could negotiate individual exceptions and flexibilities (e.g. short transition periods) to the standards where necessary. Exceptions would be negotiated in such an approach that Members would need to negotiate the exceptions from the rule.

The standards would be reflected in an Understanding on Scheduling, which would set out both i) the content of the standards and ii) techniques for scheduling (as previously proposed by the EU).

3.2 Instruments for guidance

The standards proposed above have already been subject of negotiations in the DDA. Their results and negotiating history offers valuable guidance for a plurilateral negotiation:

- *DDA revised offers*

Participants should (significantly) improve upon revised DDA offers, which can be used as reference points to establish the minimum level below which commitments should not fall.

- *ODA collective requests*

Most countries participating in the discussions about a plurilateral initiative are co-sponsors of most of the DDA collective requests and also deem themselves recipients of these. The collective requests contain the key requests in important sectors (telecommunications, computer and related services, distribution, postal and courier, maritime transport, air transport, energy, environment, construction, architecture and engineering, legal, accountancy, financial services) and provide for "model schedules" in these. They are usually very ambitious and provide ready-made assessments for individual sectors that would be valuable tools for focussing negotiations. Collective requests have the additional advantage that potential future participants are familiar with them, often through being co-sponsors themselves.