

A paper submitted to participants by the Australia in October 2012.

Australia builds upon the elements reflect on the "Reflections by the Chair" of 5 October 2012 in a more specifics manner, without departing from the "Reflections" in substance.

## AUSTRALIA-EU NON-PAPER

This paper outlines the structure that we propose for a plurilateral services agreement, building on the elements we have discussed to date, including in October. The agreement would be built in four parts, complemented by individual schedules of specific commitments (see accompanying Mock Schedule).

### FRAMEWORK FOR A PLURILATERAL SERVICES AGREEMENT

**Preamble:** including recognising the value of multilateralism; and building on the rights and obligations under the WTO GATS Agreement

#### PART I - GENERAL PROVISIONS

We have acknowledged the advantages of an agreement that builds on the GATS, that would attract broad participation, and that could thus be multilateralised in the future. We want to work with the GATS as much as possible. The GATS Articles to be brought into the agreement should include:

**Scope:** GATS Article I

**General Definitions:** GATS Article XXVIII

Additional definitions can be included, as necessary, under relevant sections in Part III, for example for Financial Services or Professional Services

**Market Access:** GATS Article XVI

**National Treatment:** GATS Article XVII

**MFN:** to be discussed further; GATS Article II (between parties) with Annex on Article II Exemptions, with/without GATS Article V (depending on outcome of discussions on 'forward MFN')

**Exceptions:** GATS Article XIV (General Exceptions); XIV bis (Security Exceptions); and GATS Annex on Financial Services Article 2 (prudential carve out)

[**Additional Commitments:** GATS Article XVIII, subject to relation with Part III]

[**Payments and Transfers:** based on GATS Articles XI and XII]

[**Denial of Benefits:** based on GATS Article XXVII]

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### **PART II - UNDERSTANDING ON SPECIFIC COMMITMENTS**

To achieve a high level of ambition in a plurilateral services agreement, which builds on the GATS (using the Guidelines for Scheduling Specific Commitments for market access) with elements from free trade agreements (horizontal commitment for national treatment, with standstill and ratchet, subject to limited exceptions), we propose scheduling commitments according to the following elements:

**Scheduling of Specific Commitments:** GATS Article XX

**Market Access:** scheduled in accordance with GATS Article XVI and GATS Article XX

**Horizontal National Treatment (NT) with standstill and ratchet:** provision applying GATS Article XVII to all sectors with limited exceptions listed in the NT column of a party's schedule. All measures inconsistent with NT must be listed (if a measure is not listed, it cannot be maintained). Standstill and ratchet, binding actual levels of liberalisation and future autonomous liberalisation, applied to horizontal NT commitment, with limited exceptions listed in the NT column in the headnote to a party's schedule (policy space reservations).

**Discriminatory Market Access (MA) measures:** provision specifying that further to GATS Article XX para 2, parties agree to list measures inconsistent with both MA and NT (such as foreign equity limitations and discriminatory juridical form requirements) in both the MA and NT columns. Since these measures are also limitations to NT, standstill and ratchet will apply, subject to any reservations listed in the NT column.

**Standards:** to be agreed between parties, on the basis of proposals. Could be included as specific commitments in the text of the agreement with limited exceptions (listed in a headnote to a party's schedule) or as a tool for market access negotiations.

The accompanying Mock Schedule illustrates how these elements could be operationalised in schedules.

### **PART III - NEW AND ENHANCED COMMITMENTS**

We would also seek to negotiate additional provisions to be agreed on the basis of proposals to be put forward during negotiations, potentially including but not limited to:

Mode 4; Domestic Regulation and Transparency; Financial Services; Professional Services; ICT Services (including telecommunications, e-commerce and computer related services); Transport and Logistics Services (including postal and courier and distribution services); Maritime Services; Environmental Services; Energy Services; and Government Procurement.

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These negotiations could result in separate chapters/annexes and/or feed into market access negotiations. Part III could also be used to incorporate existing GATS Annexes, Understandings and Reference Papers.

### **PART IV- INSTITUTIONAL PROVISIONS**

We will need to give further thought to the mechanisms which will give effect to the implementation, enforcement and multilateralisation of a plurilateral services agreement, including:

**Dispute Settlement:** to be agreed between parties

**Accession clause:** to be agreed between parties

**Critical Mass mechanism:** to be agreed between parties

**[Participation of LDCs:** to be discussed further]

A paper by Canada 30.11.2012 regarding the Annex (or Chapter) on Movement of Natural Persons.

A letter by the US Ambassador to all participants circulated in January 2013, and seeking written confirmation by participation of three rules of confidentiality.