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Directorate-General for Trade

Directorate B - Services and Investment, Intellectual Property and Public Procurement
Services

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Limited¹

Council of the European Union General Secretariat	
Trade Policy Committee (Services and Investment)	
m.d.:	45/16
source:	Commission
for:	Information/ Comments
date:	27 - 06 - 2016

NOTE FOR THE ATTENTION OF THE TRADE POLICY COMMITTEE (SERVICES AND INVESTMENT)

SUBJECT: TiSA negotiations

ORIGIN: Commission DG Trade B1

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OBJECTIVE: For information and comments

REMARKS:

Please find attached the following documents:

1. Agenda for July round
2. Annotated Agenda for July round
3. Core text incl. New Zealand's proposal to address their "Treaty of Waitangi"
4. Telecoms - Chile submission
5. Telecoms – post-round text
6. Mode 4 – updated text

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TiSA July Round

Tuesday 28 June – 10.00-18.00 (Australian Mission) Geneva-based meeting on homework, update on MA work and preparations for July round

	Fri 8	Sat 9	Sun 10	Mon 11	Tues 12	Wed 13	Thurs 14	Fri 15	Sat 16	Sun 17	Mon 18
10.00 – 13.00	Bilateral / Small Group time Bilateral / Small Group time	Transport Room D ECommerce Room E	Other Topics* Room D Localisation Room E	Horizontal MA Room D Telecoms Room E	Institutional Provisions S2 Telecoms Room E	Ecommerce Room B Bilateral/ Small Group time	Transport / Other topics* S2 FS Room E	Stocktake S3 FS plenary/small group time	FS Room E Bilateral / Small Group time	Bilateral/Small Group time Institutional Provisions Room D	Ambassadors Meeting AU Mission (10.00-12.00)
			<i>Leads Lunch Room D</i>			<i>GSC Digital Trade lunch</i>			<i>Leads Lunch Room D</i>		
14.30 – 18.00	Bilateral / Small Group time Transport Room D	Bilateral/ Small Group time Telecoms Room E	Horizontal MA Room D Telecoms Room E	DR Room D Localisation Room E	DR/Transparency S2 Localisation Room E	Telecoms S2 Bilateral/ Small Group time	Bilateral/ Small Group time FS Room E	Stocktake S3 Bilateral/ Small Group time	FS Room E Bilateral / Small group time	Bilateral / Small Group time Institutional Provisions Room D	

*Other topics will be scheduled upon request, where parties can demonstrate sufficient progress.

Evening sessions will be extended and/or additional night sessions on the annexes due to be stabilised in July will be scheduled, where necessary for progress.

Negotiators of annexes due to be stabilised should be available until the conclusion of the stocktake.

Annotated Agenda for TiSA Round 8-18 July 2016

Air Transport (Repository: CL – xxxxx@xxxxx)

I. Stabilise Definitions

- Art. 6 (d) Ground handling services
- (e) Airport operation services
- (f) Specialty air services

II. Progress discussions on

- Structure of the agreement (Articles 1-3)
- Open Skies (Article 4)

III. Market Access update

Maritime Transport (Repository: NO - xxxxx@xxxxx)

I. Articles for Stabilisation

- Art. 1 Definitions
 - (a) international maritime transport services
 - (c) multi-modal transport
 - (d) multimodal transport operator
- Art. 13 Port Fees and Charges
- Art. 7 Access and Use

II. Parties to consider whether there is a need for

- Art. 12 Domestic Regulation
- Art. 14 Seafarers

II. Progress discussions on

- Art 1. Definitions
 - (g) IMTS supplier
 - (e) feeder services
 - (f) maritime offshore services
- Art. 16 Domestic Maritime Transport (cabotage exception)

Art. 2 and 6

Art.3, 4, 5

Road Transport (Repository: TR – xxxxx@xxxxx)

I. Articles for Stabilisation

Art.2 Scope

Art. 3 Definitions

II. Progress discussions on

Art. 5 Domestic Regulation

Art. 6 Access and Use

Art. 7 Transparency

Art. 4 and 8 Professional Drivers

E-Commerce (Repository: US – xxxxx@xxxxx)

I. Review the homework list from the May/June round

II. Stabilise the following articles and their related definitions

Art. 1 General Provisions

Art. 4 Personal Information Protection

Art. 5 Unsolicited Commercial Electronic Messages

Art. 7 Open Networks

Art. 10 Customs Duties on Electronic Transmissions

Art. 12 International Cooperation

III. Further discussion and work towards agreement where possible of the following articles and their related definitions

Art. 2 Transfer of Information

Art. 6 Transfer or Access to Source Code

Art. 8 Location of Computing Facilities

Art. 11 Electronically Transmitted Content

Telecommunications (Repository: EU - xxxxxx@xxxxxx)

I. Review the homework list from the May/June round

II. Stabilise the following articles and related definitions

Art. 1	Scope
Art. 3	Telecommunications Regulatory Body
Art. 6	Licenses
Art. 7	Transparency
Art. 8	Disputes
Art. 9	Access and Use
Art. 11	Interconnection
Art. 14	Treatment of Major Suppliers
Art. 15	Competitive Safeguards
Art. 16	Interconnection Obligations Relating to Major Suppliers
Art. 19	Scarce Resources
Art. 22	International Cooperation

III. Work towards agreement of the following articles and related definitions

Art. 2	Openness of Telecommunication Services Markets
Art. 4	Technological Choice
Art. 5	Regulatory Flexibility
Art. 10	Leased Circuit Services
Art. 12	Resale
Art. 13	Access to Essential Facilities
Art. 17	Undersea Cables and Landing Facilities
Art. 20	International Mobile Roaming

Note: final attributions for articles 1, 3, 6, 7, 8, 9, 11, 14, 15, 16 and 19 as well as definitions of 'cost-oriented', 'end-user', 'license', 'non-discriminatory', 'number portability', 'reference interconnection order', 'telecommunications regulatory body' and 'telecommunications' to be made intersessionally.

Other topics (Agenda coordination: AU – xxxxx@xxxxx)

Professional Services (Repository: AU- xxxxx@xxxxx)

Progress discussions on

- Art. 9 Business Names
- Art. 10 Lawyers Fly-in, Fly-out
- Art. 5 Foreign Capital Limitations
- Art. 7 Joint Venture Requirements
- Art. 8 Economic Needs Tests

Note: Should Parties wish to propose other annexes for discussion, they are encouraged to contact the Chair asap.

Horizontal market access (Agenda coordination: AU – xxxxx@xxxxx)

I. Revisions to market access offers

- Presentation of, and questions on, any revised offers
- Updates from TiSA Parties on work on revised offers
- Sectoral MA analysis (new and/or updated)
 - Private Education (*New Zealand*)
 - Legal Services (*Canada/Australia*)
 - New services (*Japan*)
 - Other (*upon request*)

II. Approaches to horizontal issues affecting market access offers

- Taxation (*Colombia*)
- Subsidies (*Australia*)
- Exclusion of services supplied in the exercise of governmental authority from schedules (*tbc*)
- Sub-federal level measures (*EU*)

III. Other scheduling issues

- Inclusion of legal citations (*tbc*)

Note: Parties are encouraged to volunteer to present on additional topics.

Localisation (Repository: US - xxxxx@xxxxx)

I. Articles to be stabilised

- Art 3 Local content and other performance requirements
- Art 1 Local presence
- Art 2 Local/Senior management and boards of directors
- Art 5(2) and 5(3) Exceptions
- Art 4 Scheduling

Domestic Regulation (Repository: Hong Kong – xxxxx@xxxxx)

I. Articles to be stabilised

- Para 4-5 Development and Administration of Measures
- Para 6 Technical Standards
- Core Text [Article [...] Domestic Regulation]

II. Progress discussions on

- Para 3 Necessity test
- Para 2 Paragraphs to be applied horizontally to all measures affecting trade in services

Transparency (Repository: US – xxxxx@xxxxx)

I. Articles to be stabilised

- Para 2
- Para 5

II. Parties to consider the need for

- Para 7
- Para 8

III. Other Transparency text provisions

- Financial Services para 2 (CH proposal to move to Transparency Annex)
- Core Text (CH proposal to include GATS Article III language)

Institutional provisions (Agenda coordination: AU - xxxxx@xxxxx)

Institutions
Modification of Schedules
Accession
Withdrawal
Final Provisions
Multilateralisation
Dispute settlement

Financial Services (Repository: US – xxxxx@xxxxx)

I. Articles to be stabilised (or elements that are not attracting support withdrawn or revised*)

** where proponents envisage revisions, these should be circulated as far in advance of the round as possible to enable Parties to engage on them in detail.*

X.15 – Transparency
X.10 – Transfer of Information
X.13 – Senior Management and Boards of Directors
X.16 – Prudential Measures
X.3 – Market Access
X.7 – National Treatment Limitations concerning Localisation
X.21 – Supply of Insurance by Postal Entities
X.22 – Supply of Insurance by Cooperatives
X.8 – Temporary Entry of Personnel
X.6 – Financial Services Purchased by Public Entities
X.19 – Dispute Settlement

II. Other issues for further discussion

Market access offers and use of scheduling standard

Parties should be prepared to discuss any other text in the annex that is not yet stabilised, in the context of the July stocktake.

TiSA **TRADE IN SERVICES AGREEMENT**

DRAFT PROVISIONS – ~~10 July 2015~~ ~~03 November 2015~~ 21 June 2016

[This text includes all proposals related to the framework of the agreement, but does not include proposals on new and enhanced disciplines and institutional provisions (including dispute resolution).]

PE: Will address the issue of 'like circumstances' in its schedule.

PREAMBLE [...]

Part I - General Provisions

Article I-1: Scope

1. This Agreement applies to measures by [~~the~~] Parties affecting trade in services.
2. For the purposes of this Agreement, trade in services is defined as the supply of a service:
 - (a) from the territory of one Party into the territory of any other Party;
 - (b) in the territory of one Party to the service consumer of any other Party;
 - (c) by a service supplier of one Party, through commercial presence in the territory of any other Party;
 - (d) by a service supplier of one Party, through presence of natural persons of a Party in the territory of any other Party.
3. For the purposes of this Agreement:
 - (a) "measures by [~~the~~] Parties" means measures taken by:
 - (i) central, regional or local governments and authorities; and
 - (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;

In fulfilling its obligations and commitments under the Agreement, each Party shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities and non-governmental bodies within its territory;

- (b) "services" includes any service in any sector except services supplied in the exercise of governmental authority;

- (c) "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.

Article I-2: Definitions

For the purpose of this Agreement:

- (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;
- (b) "supply of a service" includes the production, distribution, marketing, sale and delivery of a service;
- (c) "measures by [~~the~~] Parties affecting trade in services" include measures in respect of
- (i) the purchase, payment or use of a service;
 - (ii) the access to and use of, in connection with the supply of a service, services which are required by those Parties to be offered to the public generally;
 - (iii) the presence, including commercial presence, of persons of a Party for the supply of a service in the territory of another Party;
- (d) "commercial presence" means any type of business or professional establishment, including through
- (i) the constitution, acquisition or maintenance of a juridical person, or
 - (ii) the creation or maintenance of a branch or a representative office, within the territory of a Party for the purpose of supplying a service;
- (e) "sector" of a service means,
- (i) with reference to a [specific] commitment, one or more, or all, subsectors of that service, as specified in a Party's Schedule,
 - (ii) otherwise, the whole of that service sector, including all of its subsectors;
- (f) "service of another Party" means a service which is supplied,
- (i) from or in the territory of that other Party, or in the case of maritime transport, by a vessel registered under the laws of that other Party, or by a person of that other Party which supplies the service through the operation of a vessel and/or its use in whole or in part; or
 - (ii) in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of that other Party;
- (g) "service supplier" means any person that supplies a service;¹

¹ Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under the Agreement. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the territory where the service is supplied.

Limited distribution – for TiSA participants only

- (h) "monopoly supplier of a service" means any person, public or private, which in the relevant market of the territory of a Party is authorized or established formally or in effect by that Party as the sole supplier of that service;
- (i) "service consumer" means any person that receives or uses a service;
- (j) "person" means either a natural person or a juridical person;
- (k) "natural person of another Party" means a natural person who resides in the territory of that other Party or any other Party, and who under the law of that other Party:
 - (i) is a national of that other Party; or
 - (ii) has the right of permanent residence in that other Party, in the case of a Party which:
 - 1. does not have nationals; or
 - 2. accords substantially the same treatment to its permanent residents as it does to its nationals in respect of measures affecting trade in services, as notified in its acceptance of or accession to the WTO agreement, provided that no Party is obligated to accord to such permanent residents treatment more favourable than would be accorded by that other Party to such permanent residents;
- (l) "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;
- (m) "juridical person of another Party" means a juridical person which is either:
 - (i) constituted or otherwise organized under the law of that other Party, and is engaged in substantive business operations in the territory of that Party or any other Party; or
 - (ii) in the case of the supply of a service through commercial presence, owned or controlled by:
 - 1. natural persons of that Party; or
 - 2. juridical persons of that other Party identified under subparagraph (i);
- (n) a juridical person is:
 - (i) "owned" by persons of a Party if more than 50 per cent of the equity interest in it is beneficially owned by persons of that Party;
 - (ii) "controlled" by persons of a Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;
 - (iii) "affiliated" with another person when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person;
- (o) "direct taxes" comprise all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

Further definitions to be developed as necessary

AU: We also need to include the Marrakesh Agreement Explanatory Notes on the meaning of the term "country", if "country" is used in the TiSA.

TW: With respect to Australia's proposal; we propose an alternative in the Part IV (Institutional Provisions), Section 4 to deal with all the terms not defined by the TiSA, in the case that the TiSA Parties deem it necessary and appropriate to harmonize the WTO and the TiSA interpretations.

- (p) **[AU propose:** "country" or "countries" as used in this Agreement include any separate customs territory Member of the WTO. In the case of a separate customs territory Member of the WTO, where an expression in this Agreement is qualified by the term "national", such expression shall be read as pertaining to that customs territory, unless otherwise specified.]

[Article [...]: Most-Favoured-Nation Treatment

CH/EU/NO: delete unless there is a parallel economic integration article below

1. With respect to any measure covered by this Agreement, each Party shall accord immediately and unconditionally to services and service suppliers of any other Party treatment no less favourable than that it accords to like services and service suppliers of any other country.
2. A Party may maintain a measure inconsistent with paragraph 1 provided that such a measure is listed in **[AU/CH/EU propose:** its [List of [MFN] **[JP propose:** Article [...] Exemptions]**[CH propose; AU/EU oppose:** , and meets the conditions of the Annex on Article II Exemptions of the GATS].]

CO: will propose a text similar to GATS Article XXII:3 in order to clarify the impossibility to invoke the MFN Article under the Dispute Settlement Mechanism of TiSA with respect to commitments taken under other international agreements particularly BIT's.

3. The provisions of this Agreement shall not be so construed as to prevent any Party from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.]

[Article [...] Economic Integration - GATS Article V] [Linked to Article on MFN]

US: proposes deletion of this article.

[CO propose: [JP propose: This Agreement shall not prevent any of its Parties from being a Party to or entering into an] agreement notified under Article V or Article V *bis* of the GATS.]

[CH/TR/NO propose: Paragraph 1 of Article [MFN] shall not apply to agreements to which a Party is a party or **[TR oppose: is] [TR propose: will be]** entering into and which liberalize trade in services between or among their parties, provided that such agreements are notified under Article V or Article V *bis* of the GATS.]

Article I-3: Market Access

1. With respect to market access through the modes of supply identified in Article I-1, each Party shall accord services and service suppliers of any other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule.²
2. In sectors where market-access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule, are defined as:
 - (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
 - (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
 - (c) limitations on 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;³
 - (d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier 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 an economic needs test;
 - (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and
 - (f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

² If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph 2(a) of Article I-1 and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph 2(c) of Article I-1, it is thereby committed to allow related transfers of capital into its territory.

³ Subparagraph 2(c) does not cover measures of a Party which limit inputs for the supply of services.

Article I-4: National Treatment

1. Subject to any conditions and qualifications set out in its Schedule, each Party shall accord to services and service suppliers of any other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.⁴
2. A Party may meet the requirement of paragraph 1 by according to services and service suppliers of any other Party, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.
3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Party compared to like services or service suppliers of any other Party.

Article I-5: Additional commitments

Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles [I-3] or I-4, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Party's Schedule.

1.

2. *Might need to be reviewed depending on outcome of discussion on new and enhanced disciplines.*

[Article [...] Transparency]

~~{Proposals to be developed}~~

US: See US text proposal on Transparency.

[CH: 1. Each Party shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of this Agreement. International agreements pertaining to or affecting trade in services to which a Party is a signatory shall also be published.]

2. Where publication as referred to in paragraph 1 is not practicable, such information shall be made otherwise publicly available.]

⁴ [Specific] commitments assumed under this Article shall not be construed to require any Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

Article [...]: Disclosure of Confidential Information

Nothing in this Agreement shall require any Party to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

[Article [...] Domestic Regulation]

[AU/CA/CH/CL/CO/CR/EU/HK/IS/IL/JP/KR/MX/NO/NZ/PA/PE/TR/TW/US/UY propose:

1. Parties recognize the right to regulate, and to introduce new regulations, on the supply of services within their territories in order to meet their **[CR/LI/MX/TR propose: public]** policy objectives.

[CH/HK/MX/TR propose; 2. AU/CA/CL/CO/CR/EU/JP/NO/PA/US oppose: Nothing in these disciplines prevents Parties from exercising the right to introduce or maintain regulations in order to ensure provision of universal service **[HK propose: in a manner consistent with their obligations and commitments under this Agreement].]**

The group has agreed to move the provision above from the DR Annex to the core text, and will further discuss if it should appear as part of the preamble or as a provision.

Recognizing the right to regulate for the purpose of ensuring provision of universal service is subsumed under a Party's right to regulate, all parties except TR prefer to remove the last bracketed text of this Article

2. **[US propose; AU/CH/HK/JP/KR/NO/NZ/PE/PK oppose; CA/CL/CO/CR/EU/IS/MX/PA/TR/TW/UY considering:** *[In sectors where specific commitments are undertaken,][Subject to any [terms, limitations,] conditions or qualifications set out in its schedule]* Each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.]

The group has agreed to move the provision above from the DR Annex to the core text.

The proponent will reflect further on its proposed bracketed text (in italics) in light of the hybrid scheduling approach of this agreement.

[AU/CA/CH/CR/CL/CO/EU/HK/IL/IS/JP/KR/LI/MX/NO/NZ/PA/PE/PK/TR/TW/US/UY
propose:

3. Each Party shall maintain [AU/CA/CO/EU/JP/LI/MX/PE/TR/US **oppose:** or institute as soon as practicable] judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.]

3.

<i>EU comment: does not support placement of this provision in the core text part 1</i>

Article I-6: Recognition

1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorization, licensing or certification of services suppliers, and subject to the requirements of Paragraph 3, a Party may recognize the education or experience obtained, requirements met, or licenses or certifications granted in a particular country. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.
2. A Party that is a party to an agreement or arrangement of the type referred to in Paragraph 1, whether existing or future, shall afford adequate opportunity for any other Party, upon request, to negotiate their accession to such an agreement or arrangement or to negotiate comparable ones with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for any other Party to demonstrate that education, experience, licenses, or certifications obtained or requirements met in that other Party's territory should be recognized.
3. A Party shall not accord recognition in a manner which would constitute a means of discrimination between countries in the application of its standards or criteria for the authorization, licensing or certification of services suppliers, or a disguised restriction on trade in services.
4. Each Party shall:
 - (a) within 12 months from the date on which the Agreement takes effect for it, inform the [Working Party on Professional Services] of its existing recognition measures and state whether such measures are based on agreements or arrangements of the type referred to in Paragraph 1;
 - (b) promptly inform the [Working Party on Professional Services] as far in advance as possible of the opening of negotiations on an agreement or arrangement of the type referred to in Paragraph 1 in order to provide adequate opportunity to any other Party to indicate their interest in participating in the negotiations before they enter a substantive phase;
 - (c) promptly inform the [Working Party on Professional Services] when it adopts new recognition measures or significantly modifies existing ones and state whether the measures are based on an agreement or arrangement of the type referred to in Paragraph 1.

5. Wherever appropriate, recognition should be based on multilaterally agreed criteria. In appropriate cases, Parties shall work in cooperation with relevant intergovernmental and non-governmental organisations towards the establishment and adoption of common international standards and criteria for recognition and common international standards for the practice of relevant services trades and professions.

Article 1-7: Payments and Transfers

1. Except under the circumstances envisaged in Article I-8, a Party shall not apply restrictions on international transfers and payments for current transactions relating to its [specific] commitments.
2. Nothing in this Agreement shall affect the rights and obligations of the members of the International Monetary Fund under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its [specific] commitments regarding such transactions, except under Article I-9 or at the request of the Fund.

Article I-8: Restrictions to Safeguard the Balance of Payments

1. In the event of serious balance-of-payments and external financial difficulties or threat thereof, a Party may adopt or maintain restrictions on trade in services on which it has undertaken [specific] commitments, including on payments or transfers for transactions related to such commitments. It is recognized that particular pressures on the balance of payments of a Party in the process of economic development or economic transition may necessitate the use of restrictions to ensure, *inter alia*, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development or economic transition.
2. The restrictions referred to in paragraph 1:
 - (a) shall not discriminate among Parties;
 - (b) shall be consistent with the Articles of Agreement of the International Monetary Fund;
 - (c) shall avoid unnecessary damage to the commercial, economic and financial interests of any other Party;
 - (d) shall not exceed those necessary to deal with the circumstances described in paragraph 1;
 - (e) shall be temporary and be phased out progressively as the situation specified in paragraph 1 improves.

3. In determining the incidence of such restrictions, Parties may give priority to the supply of services which are more essential to their economic or development programmes. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular service sector.
- [4. Any restrictions adopted or maintained under paragraph 1, or any changes therein, shall be promptly notified to [body defined by the Agreement].
5. (a) Parties applying the provisions of this Article shall consult promptly with the [body defined by the Agreement] on restrictions adopted under this Article
- (b) The [body defined by the Agreement] shall establish procedures⁵ for periodic consultations with the objective of enabling such recommendations to be made to the Party concerned as it may deem appropriate.
- (c) Such consultations shall assess the balance-of-payment situation of the Party concerned and the restrictions adopted or maintained under this Article, taking into account, *inter alia*, such factors as:
- (i) the nature and extent of the balance-of-payments and the external financial difficulties;
- (ii) the external economic and trading environment of the consulting Party;
- (iii) alternative corrective measures which may be available.
- (d) The consultations shall address the compliance of any restrictions with paragraph 2, in particular the progressive phaseout of restrictions in accordance with paragraph 2(e).
- (e) In such consultations, all findings of statistical and other facts presented by the International Monetary Fund relating to foreign exchange, monetary reserves and balance of payments, shall be accepted and conclusions shall be based on the assessment by the Fund of the balance-of-payments and the external financial situation of the consulting Party.
6. If a Party which is not a member of the International Monetary Fund wishes to apply the provisions of this Article, the [body defined by the Agreement] shall establish a review procedure and any other procedures necessary.]

AU: Paragraphs 4 to 6 subject to further discussion on institutional provisions.

⁵ It is understood that the procedures under paragraph 5 shall be the same as the GATT 1994 procedures.

Article [...] Monopolies and Exclusive Service Suppliers

1. Each Party shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that Party's obligations under Article [...] (MFN) and [specific] commitments.
2. Where a Party's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that Party's [specific] commitments, the Party shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.
3. The provisions of this Article shall also apply to cases of exclusive service suppliers, where a Party, formally or in effect, (a) authorizes or establishes a small number of service suppliers and (b) substantially prevents competition among those suppliers in its territory.

Article 1-9: General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade in services, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Party of measures:

- (a) necessary to protect public morals or to maintain public order;⁶
- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:
 - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;
 - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
 - (iii) safety;
- (d) inconsistent with Article I-4 (National Treatment), provided that the difference in treatment is aimed at ensuring the equitable or effective⁷ imposition or collection of direct taxes in respect of services or service suppliers of other Parties;
- (e) inconsistent with Article [...], provided that the difference in treatment is the result of an agreement on the avoidance of double taxation or provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Party is bound.

⁶ The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

⁷ Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Party under its taxation system which:

- (i) apply to non-resident service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Party's territory; or
 - (ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Party's territory; or
 - (iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or
 - (iv) apply to consumers of services supplied in or from the territory of another Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Party's territory; or
 - (v) distinguish service suppliers subject to tax on worldwide taxable items from other service suppliers, in recognition of the difference in the nature of the tax base between them; or
 - (vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Party's tax base.
- Tax terms or concepts in paragraph (d) of Article [...] (General Exceptions) and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Party taking the measure.

Article I-10: Security Exceptions

1. Nothing in this Agreement shall be construed:
 - (a) to require any Party to furnish any information, the disclosure of which it considers contrary to its essential security interests; or
 - (b) to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests:
 - (i) relating to the supply of services as carried out directly or indirectly for the purpose of provisioning a military establishment;
 - (ii) relating to fissionable and fusionable materials or the materials from which they are derived;
 - (iii) taken in time of war or other emergency in international relations; or
 - (c) to prevent any Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.
2. [The [body defined by the Agreement] shall be informed to the fullest extent possible of measures taken under paragraphs 1(b) and (c) and of their termination.]

[Article [...]: Annexes

The Annexes to this Agreement are an integral part of this Agreement].

4. *Might need to be reviewed depending on outcome of discussion on new and enhanced disciplines and to ensure Schedules and other relevant attachments are integral part of the Agreement.*

[Article [...] Denial of benefits

A Party may deny the benefits of this Agreement:

- (a) to the supply of a service, if it establishes that the service is supplied from or in the territory of a non-Party or of a Party to which the denying Party does not apply the WTO Agreement;
- (b) in the case of the supply of a maritime transport service, if it establishes that the service is supplied:
 - (i) by a vessel registered under the laws of a non-Party or of a Party to which the denying Party does not apply the WTO Agreement, and
 - (ii) by a person which operates and/or uses the vessel in whole or in part but which is of a non-Party or of a Party to which the denying Party does not apply the WTO Agreement;
- (c) to a service supplier that is a juridical person, if it establishes that it is not a service supplier of another Party, or that it is a service supplier of a Party to which the denying Party does not apply the WTO Agreement.]

[GATS Article XIII: Government Procurement

Articles II, XVI and XVII [Articles MFN, MA and NT] shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of services purchased for governmental purposes and not a view to commercial resale or with a view to use in the supply of services for commercial sale.]

[Placeholder for subsidies]

Part II- Scheduling Commitments

Each Party shall adopt a schedule in accordance with the provisions set out in this Part.

Article II-1: Scheduling of Market Access Commitments

In scheduling commitments pursuant to Article I-3 (Market Access), each Party shall set out in Section B of Part I and in Part II of its Schedule the [specific] commitments it undertakes, and any terms, limitations and conditions with respect to sectors where such commitments are undertaken.

Article II-2: Scheduling of National Treatment Commitments

1. In scheduling commitments pursuant to Article I-4 (National Treatment), each Party shall accord to services and service suppliers of any other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers, subject to any conditions and qualifications that the Party shall set out in its Schedule in accordance with paragraphs 2 and 4.
2. The conditions and qualifications on national treatment set out in Section B of Part I or Part II of each Party's Schedule shall be limited to measures that a Party maintains on the date this Agreement takes effect, or the continuation or prompt renewal of any such measures.
3. If a Party amends a measure referred to in paragraph 2 in a way that reduces or eliminates the inconsistency of that measure with the treatment provided for in Article I-4 (National Treatment), as it existed immediately before the amendment, a Party may not subsequently amend that measure in a way that increases the inconsistency with the treatment provided for in Article I-4 (National Treatment).
4. Paragraphs 2 and 3 and Article I-4 (National Treatment) do not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities as set out in Section A of Part I of each Party's Schedule.

CH: Switzerland will continue its consultations regarding these provisions and their implications and operationalization under its domestic law.

EU: Depending on outcomes of the discussion on annex on mode 4 a provision on Scheduling of Entry and Temporary Stay of Natural Persons could be introduced here.

[Article II-3 Scheduling of Measures Inconsistent with both Market Access and National Treatment

[AU/CA/CO/EU/JP/NZ/US **propose**: Any measure required to be set out in a Party's Schedule in accordance with both Article II-1 (Scheduling of Market Access Commitments) and Article II-2 (Scheduling of National Treatment Commitments) shall be included] in both the [NZ **oppose**: column] [NZ **propose**: part] of the Schedule that relates to Article 1-3 (Market Access) and the [NZ **oppose**: column] [NZ **propose**: part] of the Schedule that relates to Article 1-4 (National Treatment).]

[Article 11-4: Scheduling Additional Commitments]

[Under Discussion]

EU: Further horizontal commitments or standards could be introduced here.

Part III- New and Enhanced Disciplines

[...]

[US considering: Article I] Treaty of Waitangi

1. Provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Parties or as a disguised restriction on trade in services, nothing in [Part III of] this Agreement shall preclude the adoption by New Zealand of measures it deems necessary to accord more favourable treatment to Maori in respect of matters covered by [Part III of] this Agreement including in fulfilment of its obligations under the Treaty of Waitangi.
2. The Parties agree that the interpretation of the Treaty of Waitangi, including as to the nature of the rights and obligations arising under it, shall not be subject to the dispute settlement provisions of this Agreement. [Chapter [] (Dispute Settlement)] shall otherwise apply to this Article. An [arbitral tribunal] established under [Article [] (Establishment of an Arbitral Tribunal)] may be requested by a Party to determine only whether any measure (referred to in Paragraph 1) is inconsistent with its rights under this Agreement.]

Annex on Energy and Mining Related Services

[AU/IS/NO/EU propose; ~~EU considering~~: Article I - Scope

1. This Annex shall apply to measures adopted or maintained by a Party affecting trade in energy and mining related services irrespective of the energy source or mineral, technology used, whether the energy source is renewable or non-renewable, and whether the service is provided onshore or offshore. [EU/IS propose: AU oppose: This Annex shall not apply to measures adopted or maintained by a Party affecting trade in services related to nuclear energy.]
2. Nothing in this Annex affects the sovereignty and sovereign rights¹ of a Party over its energy and mineral resources. This Annex does not apply to the granting of concessions or licences for the exploration, development or [IS oppose: exploitation] [IS propose: utilization] of a Party's energy resources or minerals.
3. For greater certainty, nothing in this Annex affects the right of a Party to
 - (a) determine rules governing property ownership of energy sources and minerals,
 - (b) determine the geographical areas to be made available for exploration, development and [IS oppose: exploitation] [IS propose: utilization] of its energy and mineral resources,
 - (c) determine the optimisation of their recovery and the rate at which its energy sources and minerals may be depleted or otherwise [IS oppose: exploited] [IS propose: utilized],
 - (d) specify and enjoy any taxes, royalties or other financial payments payable by virtue of such exploration and [IS oppose: exploitation] [IS propose: utilization],
 - (e) regulate the environmental and safety [EU/IS propose: public health and cultural heritage] aspects of such exploration, development and [IS oppose: exploitation] [IS propose: utilization], and
 - (f) participate in such exploration and [IS oppose: exploitation] [IS propose: utilization], inter alia, through direct participation by the government or through [state enterprises].]

[AU/EU/IS/NO propose: Article II- Definitions

For the purpose of this Annex:

- (a) **Energy related services** means
 - (i) [AU/NO/IS/EU proposes: ~~EU considering~~: services supplied to a juridical person engaged in the exploration, [IS oppose: exploitation] [IS propose: utilization], development, production, transmission, storage or distribution of energy or energy sources].

¹ Under international law, a state has sovereignty over its own territory and its territorial sea with limited exceptions. On the other hand, within its continental shelf a state has sovereign rights for the specific purpose of exploring and exploiting its natural resources and within its exclusive economic zone a state has sovereign rights for specifically exploring, exploiting, conserving and managing natural resources. These distinctions between sovereignty and sovereign rights are why both terms have been included.

- (ii) [**EU propose: AU/IS/NO considering:** services that contribute to more efficient energy use by managing and restraining the growth in energy consumption through delivering more output for the same energy input or the same output for less energy input and that are supplied to a natural or juridical person.]

AU/EU/IS/NO: We are open to further work to refine the definition of energy related services, and propose to revert to a discussion about how to target relevant services, where relevant, whether in the definition, members' individual schedules, or elsewhere in this annex.

- (b) [**AU/EU propose: ~~EU/NO considering:~~ Mining related services** means services supplied to a juridical person engaged in activities in the supply chain for minerals from the exploration of those minerals in the territory of a Party through to their delivery either to facilities that use minerals as inputs to a production process in that Party or to the point of export from that Party; or the importation of those minerals into the territory of a Party through to their delivery to facilities that use minerals as inputs to a production process in that Party.]

AU/IS/NO: We recognise these definitions may overlap with the Annexes on Maritime and Transport Services. It is not our intention to import a discussion on scope of those activities in an energy and mining context. The definitions proposed outline our general approach; we suggest that they be revisited once the scope of the Maritime and Transport Services Annexes is further established.

[AU/EU/IS/NO propose Article III - Cross-border Trade and Commercial Presence

With respect to trade in services as defined in Article I-1:(2) (a) – (c) [Mode 1, 2, and 3], the schedule of each Party includes commitments pursuant to Article I-3 (Market Access) and I-4 (National Treatment), subject to any terms, limitations, conditions, and qualifications set out therein, for the supply of the following energy and mining related services:

- architectural services [CPC 8671],
- engineering services [CPC 8672],
- integrated engineering services [CPC 8673],
- management consulting services [CPC 865],
- services related to management consulting services [CPC 866],
- site formation and clearance services [CPC 5113] (including geothermal drilling services),
- [**AU considering:** maintenance and repair of equipment [CPC 633 + 8861- 8866],]
- construction and related engineering services [CPC 51],
- rental/leasing services without operator related to ships [CPC 83103],
- rental/leasing services without operator related to other transport equipment [CPC 83101+83102],

- rental/leasing services without operator related to other machinery and equipment [CPC 83106+83109],
- technical testing and analysis services [CPC 8676],
- services incidental to mining [CPC 883, 5115],
- related scientific and technical consulting services [CPC 8675],
- environmental services [CPC 94],
- other lodging services n.e.c. [CPC 64199] (lodging offshore),
- maritime domestic transport services [CPC 7212],
- maritime towing and pushing services [CPC 7214],
- bulk storage services of liquids or gases [CPC 7422],
- services incidental to energy distribution [CPC 887],
- transportation of petroleum and natural gas [CPC 7131],
- wholesale trade services of solid, liquid and gaseous fuels and related products [CPC 62271],
- retail sales of motor fuel [CPC 613],
- retail sales of fuel oil, bottled gas, coal and wood [CPC 63297],
- sales on a fee or contract basis of fuels, metals, ores, timber, building materials and industrial and technical chemicals [CPC 62113],
- repair services incidental to metal products, machinery and equipment [CPC 886],
- computer and related services [CPC 84],
- research and development services [CPC 85], and
- **[IS propose: any other services related to geothermal energy]].**

[EU/IS propose, NO considering: Article IV- Supply of Services by Natural Persons

With respect to trade in services as defined in Article I-1(2) (d) (Mode 4), in accordance with Article 5 of the Annex on Movement of Natural Persons, each Party shall allow the entry and temporary stay of [contractual service suppliers and **[IS propose: /or]** independent professionals] for the supply of energy [**AU propose: and mining**] related services at least to the extent of a commitment undertaken in accordance with Article III of this Annex.^{2]}

[IS/NO/EU propose: Article V- Scheduling of Commitments

The terms, limitations, conditions and qualifications as referred to in Article III [**AU/IS/EU propose: shall**][**AU/IS/EU propose, NO considering: may**] be set out separately in each Party's schedule, in a manner that shows improvements to the commitments scheduled under the CPC categories listed in Article III.]

[IS/NO propose: Article VI - Competition

² If a Party sets a reservation in accordance with Article III, the reservation also constitutes a reservation to this Article to the extent that the measure sets out in or permitted by the reservation affects the treatment of a natural person entering and staying in the territory of the other Party.

1. Each Party shall work to alleviate market distortions and barriers to competition in the supply of energy related services, including the distortions originating from the dominant position of [national] energy companies.
2. Each Party shall ensure that it has and enforces such laws and regulations as are necessary and appropriate to address anti-competitive conduct in the energy related services markets.
3. Each Party shall ensure that their respective competition law and policy are enforced in a transparent, timely, objective and non-discriminatory manner.]

[IS/NO propose: Article VII - Procurement of energy related services]

[AU proposes: Article VIII: Local Content Requirements]

AU: If needed, the wording of Article VIII will be reviewed and updated to align with the language in Article X.3 of the Annex on Localisation Provisions.

1. Subject to paragraphs 2 and 3, any measures affecting trade in energy and mining services that a Party maintains, on the date this Agreement [is concluded], in connection with the exploration, development or exploitation of energy sources or minerals:
 - (a) that accord, for the modes of supply identified in Article I-1:2 (a), (b) and (c) [Mode 1, 2, and 3], to services and service suppliers of any other Party treatment less favourable than it accords to its own like services and service suppliers; or
 - (b) (i) [through commercial presence] that impose or enforce any requirement or enforce any commitment or undertaking; or
(ii) through commercial presence, that condition the receipt or continued receipt of an advantage on compliance with any requirement to achieve a given level or percentage of domestic content; or to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;

shall be set out in Section B of Part I and in Part II of that Party's schedule in accordance with Article II-1 and Article II-2 paragraphs 2 and 3 and Article X.4 paragraphs 1 and 2 [Scheduling of localisation commitments].

2. Paragraph 1 does not apply to any measure that a Party maintains on the date this Agreement [is concluded] with respect to an entry in Section A of Part I of its Schedule that is not an energy or mining-related entry.
3. Following the entry into force of this Agreement, and where a Party relies on an energy or mining-related entry in Section A of Part I of its Schedule to adopt a measure otherwise

inconsistent with paragraph 1, the relevant measure shall be deemed to be set out in Section B of that Party's Schedule³.

[X] Exceptions to Paragraph 1 (b): Paragraphs will be added to include exceptions to the obligations in Paragraph 1 (b). It is envisaged these will include those exceptions included in the proposal on localisation with some additional proposals, subject to further discussions including in the localisation context. The general exceptions in the core text will apply to paragraph 1].

[AU proposes: Article IX: Foreign Capital Limitations

1. With respect to measures affecting trade in services as defined in Article I-1:2(c) [Mode 3], any limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment for entities/juridical persons supplying services incidental to mining [CPC 883, 5115] shall be set out in Section B of Part I and in Part II of each Party's schedule in accordance with Article II-1 and Article II-2 paragraphs 2 and 3.]

[AU proposes: Article X: Foreign Partnership or Management Participation Limitations

1. No Party may, with respect to entities supplying services incidental to mining [CPC 883, 5115] through a commercial presence, restrict the nationality of partners or of senior managerial or other essential personnel.]

[AU proposes: Article XI: Joint-venture requirements

1. With respect to measures affecting trade in services as defined in Article I-1:2(c) [Mode 3], any restrictions or requirements for specific types of legal entity, joint venture [or joint operation] through which a service supplier may supply services incidental to mining [CPC 883, 5115] shall be set out in Section B of Part I and in Part II of each Party's schedule in accordance with Article II-1 and Article II-2 paragraphs 2 and 3.] .

[AU proposes: Article XII: Economic Needs Tests

1. No Party may adopt or maintain discriminatory economic needs tests, as a requirement for the supply of services incidental to mining [CPC 883,5115] through the modes of supply identified in Article I-1:2 (a), (b) and (c) [Mode 1, 2, and 3].⁴

³ For greater certainty, a measure will not be deemed where it is adopted pursuant to a Section A entry applies that is not an energy or mining related entry.

⁴ Nothing in this paragraph shall be construed to prevent a Party applying economic needs tests in a manner which accords national treatment to suppliers of services incidental to mining [CPC 883,5115] of any other Party within the meaning of Article I:4.

Trade in Services Agreement (TiSA)

Annex on Electronic Commerce

Derived From: Classification Guidance
Dated September 16, 2013
Reason: 1.4(b)

* This document must be protected from unauthorized disclosure, but may be mailed or transmitted over unclassified e-mail or fax, discussed over unsecured phone lines, and stored on unclassified computer systems. It must be stored in a locked or secured building, room, or container.

Article 1: General Provisions

1. This Annex shall apply to measures by a Party affecting trade in services using [**CR considering**: or enabled by] electronic means.
2. [**CH propose; PK considering; AU/CA/CL/TW/CO/EU/IL/JP/KR/MU/MX/NZ/NO/PE/TR/US oppose**: This Annex is without prejudice to the policy objectives and legislation of the Parties in areas such as the protection of intellectual property, the protection of privacy and of the confidentiality of personal and commercial data, the protection of consumers and the protection and promotion of the diversity of cultural expressions (including through public funding and assistance).]
3. [**KR propose**: For greater certainty, the obligations contained in Article 2 (Movement of Information), Article 6 (Transfer or Access to Source Code) and Article 8 (Location of Computing Facilities) are subject to the relevant provisions and exceptions of this Agreement.]
4. [**CA/JP/KR/MU/NZ propose; AU/CL considering**: The obligations under Articles (Movement of Information, Transfer or Access to Source Code, and Location of Computing Facilities) [**AU/CA/KR/NZ propose; CL considering**: (Electronically Transmitted Content)] shall not apply to:
 - a) the measures adopted or maintained by a Party, which are set out in the List of Exemptions in accordance with Paragraph 2 of Article (Most-Favoured-Nation Treatment); and
 - b) [**CA propose; AU/NZ considering**: the terms, limitations, conditions and qualifications, which are set out in Party's Schedule.]]
5. [**CA/CL/TW/CO/HK/JP/KR/MU/MX/NZ/PK/PA/PE/US propose; AU/IL/NZ/CH considering**: This Annex shall not apply to:]
 - a) [**CA/CL/TW/CO/HK/JP/KR/MU/MX/PK/PA/PE/US propose; AU/CL/IL/NZ/CH considering** government procurement; or]
 - b) [**HK/JP/KR/MU/MX/PK/PA/PE propose; IL/CH considering; NZ oppose**: subsidies or grants provided by a Party including government-supported loans, guarantees, and insurance;]
 - c) [**CA/CL/TW/CO/KR/MU/NZ/PK propose, AU/MX/NZ/PE/US considering**: information held or processed by, or on behalf of, a Party or measures related to such information, including measures related to its collection.]

6. [**KR/MU/CH propose; MX/PK considering; AU/CA/CL/EU/NZ/NO/PE oppose:** This Annex does not apply to financial services.]

7. [**EU/MU propose; AU/CA/CL/TW/CO/IS/IL/JP/KR/LI/MX/NZ/NO/PK/US considering:** The Parties recognize the importance of measures conducive to the development of [consumer trust] in [digital trade] and in particular of measures covered by Article 3 (Online Consumer Protection), Article 4 (Personal Information Protection), Article 5 (Unsolicited Commercial Communications), and Article 9 (Electronic Authentication) of this Annex.]

<p>US: The possible applicability of Article 2 (Movement of Information) and Article 8 (Local Infrastructure) of this Annex to financial services is under consideration.</p>
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Article 2: Movement of Information [CH propose: Cross-Border Information Flows ¹]

1. [CA/CL/TW/CO/MU/MX/NZ/PA/PE propose: [CH propose: Notwithstanding paragraph 2,] [CH oppose: The Parties recognize that] each Party [CH oppose: may have] [CH propose: has the right to apply] its own regulatory requirements concerning the transfer of information by electronic means.]
2. [HK/MU propose; IL considering: Subject to any measures adopted or maintained by a Party to protect the privacy of individuals in relation to personal data, and the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Parties where like conditions prevail, or disguised restriction on trade in services,] [CA/TW/CO/HK/JP/MX/PE/US propose; IL/MU considering: No Party may prevent a service supplier of another Party from transferring, [[JP oppose: accessing], processing or storing] information, including personal information, within or outside the Party's territory, where such activity is carried out in connection with the conduct of the service supplier's business.]
3. [MU/CH propose: Parties should enhance their enforcement capacity to ensure that the applicable laws and regulations concerning the protection of data and privacy are complied with.]
4. [CA/CL/TW/CO/JP/MU/MX propose; PE/PK considering: Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 2 to achieve a legitimate public policy objective, provided that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or disguised a restriction on trade.]

US: The possible applicability of this Article to financial services is under consideration.

¹ [CH propose: This article is without prejudice to the policy objectives and legislation of Switzerland in the area of data protection.]

Article 3: Online Consumer Protection

1. The Parties recognize the importance of maintaining and adopting transparent and effective measures to protect consumers from fraudulent and deceptive commercial practices when they engage in electronic commerce.
2. To this end each Party shall adopt or maintain consumer protection laws to proscribe fraudulent and deceptive commercial practices that cause harm or potential harm to consumers engaged in online commercial activities.
3. The Parties recognize the importance of cooperation between their respective national consumer protection agencies or other relevant bodies on activities related to cross-border electronic commerce in order to enhance consumer welfare.

Article 4: Personal Information Protection

1. [AU/CA/CL/TW/CO/IL/JP/KR/MU/MX/NZ/NO/PA/PE/CH propose: The Parties recognize the [MU/CH propose: rights of consumers] [CH oppose: economic and social benefits] of [MU/CH propose: the protection of] [CH oppose: protecting] the personal information [CH oppose: of users of electronic commerce] [and the contribution that this makes to enhancing consumer confidence in electronic commerce].] [CH propose: ²]
2. [AU/CA/CL/TW/CO/IL/KR/MU/MX/NZ/NO/PA/PE/CH propose: [CH oppose: To this end,] each Party shall adopt or maintain a domestic legal framework that provides for the protection of the personal information of the users of electronic commerce. In the development of these personal information protection frameworks, each Party should take into account principles and guidelines of relevant international bodies.]
3. [CA/MU propose; CL/TW/CO/KR/MX considering: Each Party shall [CA propose; CL/CO considering: endeavour to] ensure that its domestic legal framework for the protection of personal information of users of electronic commerce is applied on a non-discriminatory basis.]
4. [AU/CA/CL/TW/CO/IL/JP/KR/MU/MX/NZ/NO/PA/PE/CH propose: Each Party [CH propose: shall] [CH oppose: should] publish [CH propose; AU/CA/KR/NZ oppose: comprehensive] information on the personal information protections it provides to users of electronic commerce, including:
 - a) how individuals can pursue remedies; and
 - b) how business can comply with any legal requirements.]

² [CH propose: It is understood that pursuant to this paragraph Parties may maintain and further develop their own legislation in the area of personal information protection.]

Article 5: Unsolicited Commercial Electronic Messages

1. Each Party shall adopt or maintain measures regarding unsolicited commercial electronic messages that:
 - a) require suppliers of unsolicited commercial electronic messages to facilitate the ability of recipients to prevent ongoing reception of such messages; [or]
 - b) require the consent, as specified according to the laws and regulations of each Party, of recipients to receive commercial electronic messages; [or]
 - c) [**PK/PE/US propose; EU/IS/IL/LI/NO/CH oppose**: otherwise provide for the minimization of unsolicited commercial electronic messages.]
2. Each Party shall provide recourse against suppliers of unsolicited commercial electronic messages who do not comply with its measures implemented pursuant to paragraph 1.
3. The Parties shall endeavour to cooperate in cases of mutual concern regarding the regulation of unsolicited commercial electronic messages.

Article 6: Transfer or Access to Source Code

1. **[CA/CO/JP/MU/CH propose; MX/PK/PE/US considering:** No Party may require the transfer of, or access to, source code of software owned by a person of another Party, as a condition **[CA/JP propose;** for supplying a service] [of providing services related to such software] in its territory].
2. **[CA/CO/JP/MU/CH propose; MX/PK considering:** Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph I to achieve a legitimate public policy objective, provided that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or disguised a restriction on trade.]
3. **[JP propose; CA/CL/MU/PK/US considering:** Nothing in this Article shall preclude:
 - a) the inclusion or implementation of terms and conditions related to the provision of source code in commercially negotiated contracts; or
 - b) a Party from requiring the modification of source code of software necessary for that software to comply with laws or regulations which are not inconsistent with this Agreement.]
4. **[JP propose; CA/CL/MU/PK/US considering:** This Article shall not be construed to affect requirements that relate to patent applications or granted patents, including any orders made by a judicial authority in relation to patent disputes, subject to safeguards against unauthorized disclosure under the law or practice of a Party.]

Article 7: Open Networks, Network Access and Use of the Internet

1. Each Party recognizes the benefit of [**EU oppose:** consumers] [**EU propose:** end users] in its territory, subject to applicable laws, and regulation being able to:
 - a) access [**EU propose:** distribute] and use services and applications of their choice available on the Internet subject to [**EU propose:** non-discriminatory and] reasonable network management;
 - b) connect their choice of end user devices to the Internet provided that such devices do not harm the network; and
 - c) have access to information on network management practices of their Internet Access service suppliers.

Article 8: Location of Computing Facilities [KR propose: ³]

1. [CA/CL/CO/IL/JP/MU/MX/PK/PE propose: The Parties recognize that each Party may have its own regulatory requirements regarding the use of computing facilities, including requirements that seek to ensure the security and confidentiality of communications.]
2. [CA/CL/CO/IL/JP/MU/PE/PK/US propose; MX considering; CH oppose: No Party may require a service supplier, as a condition for supplying a service in its territory, to use or locate computing facilities in the Party's territory.]
3. [CO/MU propose; PK considering: For greater certainty, nothing in paragraph 2 should prevent a Party from conditioning the receipt or continue receipt of an advantage on compliance with the requirement to use, establish, or expand computing facilities in its territory, including those needed for the processing or storage of data.]
4. [CA/CL/CO/IL/JP/MU/MX/PK/PE propose: Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 2 to achieve a [PK considering: legitimate] public policy objective, provided that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or disguised a restriction on trade.]

US: The possible applicability of this Article to financial services is under consideration.

³[KR propose; PK considering: Article 8 does not apply with respect to suppliers of public telecommunication networks or services.]

Article 9: Electronic Authentication and Electronic Signatures

1. Except where otherwise provided for in its law, a Party shall not deny the legal validity of a signature solely on the basis that the signature is in electronic form.
2. No Party may adopt or maintain measures for electronic authentication that would:
 - a) prohibit parties to an electronic transaction from mutually determining the appropriate electronic authentication methods for that transaction; or
 - b) prevent parties from having the opportunity to establish before judicial or administrative authorities that their electronic transaction complies with any legal requirements with respect to electronic authentication.
3. Notwithstanding paragraph 2, a Party may require that, for a particular category of transactions, the method of electronic authentication meet certain performance standards or be certified by an authority accredited in accordance with the Party's law.

Article 10: Customs Duties [on Electronic Transmissions]⁴

1. No Party may impose customs duties on [**US propose; CA/EU/IL/NO/CH oppose:** electronically transmitted content] [electronic transmissions].
2. For greater certainty, nothing in paragraph 1 prevents a Party from imposing internal taxes, fees or other charges on [electronic transmissions] [**US propose:** electronically transmitted content], provided that such taxes, fees or charges are imposed in a manner consistent with this Agreement.

⁴ [**CA/JP propose; AU/CL/CO/KR/MU/NZ/NO/PK considering:** This Article is without prejudice to whether electronic transmissions are a good or a service.]

Article 11: Electronically Transmitted Content

1. [US propose; PK considering: No Party shall accord less favourable treatment to electronically transmitted content created, produced, published, contracted for, commissioned or first made available on commercial terms in the territory of another Party, or to electronically transmitted content of which the author, performer, producer, developer or owner is a person of another Party, than it accords to other like electronically transmitted content.⁵
2. The Parties understand that this Article does not apply to subsidies or grants provided by a Party including government-supported loans, guarantees and insurance.
3. This Article shall not apply to broadcasting.]

⁵ For greater certainty, to the extent that electronically transmitted content of a non-Party is “like electronically transmitted content,” it will qualify as “other like electronically transmitted content” for the purposes of paragraph 1 of this Article.

Article 12: International Cooperation

1. **[MU/PK propose:** Each Party shall **[MU oppose:** endeavour to] cooperate with the other Parties to increase the level of digital literacy globally and reduce the “digital divide.”]
- 1 alt. **[MU propose; PK considering:** Parties affirm their intention to work together and cooperate in international fora to increase the level of digital literacy and to reduce the global digital divide.]
2. **[MU propose; PK considering:** Parties **[MU oppose:** will] **[MU propose:** shall] **[MU oppose:** to the extent possible] exchange information in the area of electronic commerce. That may include information on, inter alia:
 - a) technological developments and research in the area of electronic commerce;
 - b) commercial and technical aspects of the supply of electronic commerce through all modes of supply;
 - c) available possibilities for the exchange of electronic commerce technology; and
 - d) applicable laws and regulations, legislative processes and recent legislative developments; applicable technical standards.]
3. **[MU/PK propose:** Parties will exchange views on developments related to electronic commerce at the international level.]
4. **[PK considering:** Parties affirm their intention to:
 - a) promote these provisions in order to contribute to the expansion and spread of electronic commerce ; and
 - b) cooperate with third countries with a view to enhancing national regulatory capacity and to contribute to the spread of electronic commerce which is a powerful tool for promoting economic development.]

[CO/CH propose alt: 1. Parties recognize the importance of exchanging information relating to the implementation of this Annex, and other aspects related to electronic commerce. To this end, Parties will endeavour to answer arising queries presented through the Contact Points (as established in Transparency Article 6.a.) related to issues concerning the development of electronic commerce, which may include:

- a) technological developments and research in the area of electronic commerce;
 - b) commercial and technical aspects of electronic commerce;
 - c) applicable laws and regulations, legislative processes and recent legislative developments; applicable technical standards.
2. Parties affirm their intention to cooperate with a view to enhancing national regulatory capacity and to contribute to the spread of electronic commerce which is a powerful tool for promoting economic development.]

Article 13

[MU/US propose; PK considering: Nothing in [Section III (Electronic Commerce)] shall be construed to prevent any Party from taking any action which it considers necessary for the protection of its own essential security interests.]

[PK propose: This Annex shall be construed without prejudice to the requirements of licensing provided in the laws of a Party for provision of any particular service.]

JP would like to clarify the meaning of “essential security interests” in paragraph 1 of this article.
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Article 14: Definitions

For purposes of this Annex:

[**AU/CA/TW/CO/CR/IL/JP/KR/MU/MX/NZ/PK/PE/TR/US propose; HK considering:** electronic authentication means the process or act of [establishing] [TW/IL/JP/MU/MX/NZ/NO/PK/TR/US propose: verifying] the identity of a party to an electronic communication or transaction or [IL/PK/TR/US propose: and] ensuring the integrity of an electronic communication;]

[**CA/CL/JP/KR/MU/MX/PE/US propose; CO/PK considering:** computing facilities means computer servers and storage devices for the processing or storage of information for commercial use [KR propose; PK considering; and not for public telecommunications services];]

[**CA/CO/MU/US propose; PK considering:** customs duties includes any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, but does not include any:

- a) charge equivalent to an internal tax imposed consistently with Article III:2 of GATT 1994, in respect of like, directly competitive, or substitutable goods of the Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;
- b) antidumping or countervailing duty that is applied pursuant to a Party's law; or
- c) fee or other charge in connection with importation commensurate with the cost of services rendered;]

[**CR/EU/MU/TR:** electronic signature means data in electronic form which are attached to or logically associated with other electronic data and fulfils the following requirements:

- a) it is used by a person to agree on the electronic data to which it relates;
- b) it is linked to the electronic data to which it relates in such a way that any subsequent alteration in the data is detectable;]

[**US propose:** electronic signature means data in electronic form that is in, affixed to, or logically associated with, an electronic document, and that may be used to identify the signatory in relation to the electronic document and indicate the signatory's approval of the information contained in the electronic document;]

[**US propose:** electronically transmitted content means any content that is digitally encoded and produced for commercial sale or distribution, including a computer program. For greater certainty, electronically transmitted content does not include digitized representations of financial instruments, including money. This definition is without prejudice to whether electronically transmitted content is a good;]

[**AU/CA/TW/CO/JP/KR/MU/MX/NZ/CH/TR propose:** personal information means any information, including data, about an identified or identifiable natural [**CH propose:** or juridical] person;]

Proponents will consult on this definition of personal information.

[**CR considering:** unsolicited commercial electronic message means an electronic message which is sent [**US considering:** primarily] for commercial [**HK oppose:** or marketing] purposes to an electronic [**PE propose:** mail] address without the consent of the recipient or against the explicit rejection of the recipient, using an Internet access service supplier and, to the extent provided for under the domestic laws and regulations of each Party, other telecommunications service.]

Without prejudice- For TiSA participants only

TRADE IN SERVICES AGREEMENT

Annex [X]: Financial Services

This draft is without prejudice to further proposals or positions of the proponents

14 April 2016

Annex [X]: Financial Services

This draft is without prejudice to further proposals or positions of the proponents

Article X.1: Scope [CH alternative to the group: and definition]

1. This section/Annex applies to measures affecting the supply of financial services. Reference to the supply of a financial service in this Annex shall mean the supply of a service as defined in paragraph 2 of Article I-1 of the Agreement.
2. For the purposes of subparagraph 3(b) of Article I-1 of the Agreement, "services supplied in the exercise of governmental authority" means the following:
 - (a) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;
 - (b) activities forming part of a statutory system of social security or public retirement plans; and
 - (c) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Party or its public entities.
3. For the purposes of subparagraph 3(b) of Article I-1 of the Agreement, if a Party allows any of the activities referred to in subparagraphs (b) or (c) of paragraph 2 of this Article to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, "services" shall include such activities.
4. Subparagraph 3(c) of Article I-1 of the Agreement shall not apply to services covered by this Annex.

Article X.2: Definitions

For purposes of this Annex/section:

- (a) A financial service is any service of a financial nature offered by a financial service supplier of a Party. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance). Financial services include the following activities:

Insurance and insurance-related services

- (i) direct insurance (including co-insurance):
 - (A) life;
 - (B) non-life;
- (ii) reinsurance and retrocession;
- (iii) insurance intermediation, such as brokerage and agency;
- (iv) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services;

Banking and other financial services (excluding insurance)

- (v) acceptance of deposits and other repayable funds from the public;
- (vi) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;
- (vii) financial leasing;
- (viii) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;
- (ix) guarantees and commitments;
- (x) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
 - (A) money market instruments (including cheques, bills, certificates of deposits);
 - (B) foreign exchange;
 - (C) derivative products including, but not limited to, futures and options;
 - (D) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
 - (E) transferable securities;
 - (F) other negotiable instruments and financial assets, including bullion.
- (xi) participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
- (xii) money broking;
- (xiii) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depositary and trust services;
- (xiv) settlement and clearing services for financial assets, including securities, derivative products and other negotiable instruments;
- (xv) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;
- (xvi) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (v) through (xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.

- (b) A "financial service supplier" means any natural or juridical person of a Party seeking¹ to supply or supplying financial services but the term "financial service supplier" does not include a public entity.
- (c) "public entity" means:
 - (i) a government, a central bank or a monetary authority, of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or
 - (ii) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.

Article X.2(c) is stabilized only for purposes of Article X 1 (Scope). The use of the term "public entities" for purposes of Article X.6 (Financial Services purchased by public entities) is not agreed.

- (d) a new financial service is a service of a financial nature, including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the territory of a Party but which is supplied in the territory of another Party.
- (e) self-regulatory organization means a non-governmental body, including a securities or futures exchange or market, clearing agency, or other organization or association, that exercises regulatory or supervisory authority over financial service suppliers by delegation from a Party

Article X.3: Market Access Commitment

- 1. The schedule of each Party includes commitments pursuant to Article I-3 (Market Access), subject to [any] terms, condition and limitation set out therein with respect to:

- (a) the supply by a financial service supplier of one Party, through commercial presence as defined in Article I-2(d), in the territory of any other Party of all financial services referred to in Article X.2(a);
- (b) the supply by a financial service supplier of one Party, from the territory of that Party into the territory of any other Party of the following financial services:

¹ [CH propose: It is understood that seeking has the same meaning as wishing for the purpose of this paragraph.]

- i. insurance of risks relating to:
 - (A) Maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the **[NO propose; CA/PK/TW/US considering; AU/CO/CL/CR/IL/JP/KR/MX/NZ/PA/PE/TR oppose]** liability for passengers] goods being transported, the vehicle transporting the **[NO propose; CA/PK/TW/US considering; AU/CO/CL/CR/IL/JP/KR/MX/NZ/PA/PE/TR oppose]** passengers or] goods and any liability arising there from;
 - (B) **[NO propose; CA/PK/TW/US considering; AU/CO/CL/CR/IL/JP/KR/MU/MX/NZ/PA/PE/TR oppose]** fishing vessels of a size and engine capacity to operate beyond 200 nautical miles from the port];
 - (C) **[NO propose; CA/PK/US considering, AU/CO/CL/CR/IL/JP/KR/MX/NZ/PA/PE/TR/TW oppose]** exploration, development, production activities, and properties in the offshore energy sector by large customers²]; and
 - (D) goods in international transit;
- ii. Reinsurance and retrocession;
- iii. insurance intermediation, as referred to in subparagraph (a)(iii) of Article 2 of the Annex, related to the services listed in subparagraphs 1 (b)(i) and 1(b)(ii);
- iv. services auxiliary to insurance as referred to in subparagraph (a)(iv) of Article 2 of the Annex;
- v. provision and transfer of financial information and financial data processing and related software as referred to in subparagraph (a)(xv) and advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services as referred to in subparagraph (a)(xvi), both of Article X.2 of the Annex;
- vi. **[AU/CA/CH/CO/PE/KR/MU/MX/TW/US propose; CL/JP considering; CRIEU/HK/TR oppose]** investment advice to a collective investment scheme located in the Party's territory;]
- vii. **[AU/CA/CH/CO/MU/MX/PE/TW/US propose; CL/KR/JP considering; CR/EU/HK oppose]** portfolio management services to a collective investment scheme located in the Party's territory, excluding
 - (A) trustee services;
 - (B) custodial services and execution services that are not related to managing a collective investment scheme;³]

² **[NO propose]**: with an activity of at least 10 man-years or annual sales of above USD 10 million.]

³ Custodial services are included in paragraph (f) only with respect to investments for which the primary market is outside of the territory of the party.

Note: "Collective investment scheme" is a country-specific defined term. As such it will require an appendix where each Party identifies the coverage.

Example: In the United States, a collective investment scheme means [an investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940. Custodial services are included in the scope of the specific commitment made by the United States under this annex only with respect to investments for which the primary market is outside the territory of the Party.

- (viii) **[US propose; MU/PK considering; CL/CO/CRIEU/HK/IL/IS/JP/KR/NO/TR/TW oppose:** electronic payment services for payment card transactions⁴ into its territory from the territory of another Party by a person of that Party. For the purposes of this clause:
- (A) a "payment card" means a credit card, charge card, debit card, check card, automated teller machine ("ATM") card, prepaid card, and other physical or electronic products or services for performing similar functions as such cards, and the unique account number associated with that card, product, or service; and
 - (B) "electronic payment services for payment card transactions" does not include the transfer of funds to and from transactors' accounts; and
 - (C) "electronic payment services for payment card transactions" includes only those payment network services that use proprietary networks to process payment transactions.]

⁴ For greater certainty, the electronic payment services for payment card transactions referred to in this commitment fall within subparagraph (viii) of the definition of "financial service" in Article 2, and within subcategory 71593 of the United Nations Central Product Classification, Version 2.0, and include only the processing of financial transactions such as verification of financial balances, authorization of transactions, notification of banks (or credit card issuers) of individual transactions and provision of daily summaries and instructions regarding the net financial position of relevant institutions for authorized transactions.

US Proposes revising subparagraph (viii) to read as follows:

- (viii) **[US propose; MU/PK considering; CL/CO/CR/EU/HK/IL/IS/JP/KR/NO/TR/TW oppose:** electronic payment services for payment card transactions {FN4} into its territory from the territory of another Party by a person of that Party. For the purposes of this subparagraph, "electronic payment services for payment card transactions":
- (A) does not include the transfer of funds to and from transactors' accounts; and
 - (B) includes only those payment network services that use proprietary networks to process payment transactions.]

{FN4 unchanged: For greater certainty, the electronic payment services for payment card transactions referred to in this commitment fall within subparagraph (viii) of the definition of "financial service" in Article 2, and within subcategory 71593 of the United Nations Central Product Classification, Version 2.0, and include only the processing of financial transactions such as verification of financial balances, authorization of transactions, notification of banks (or credit card issuers) of individual transactions and provision of daily summaries and instructions regarding the net financial position of relevant institutions for authorized transactions.}

US proposes capturing Party-specific practices with respect to subparagraphs (vi), (vii), and (viii) in an annex as follows:

[Appendix X to Annex [X]: Financial Services]

1. For the purposes of Articles X.3 (1) (b) (vi) and (vii), "collective investment scheme" means:
 - (a) in Australia, a managed investment scheme as defined under section 9 of the Corporations Act 2001 (Cth), other than a managed investment scheme operated in contravention of subsection 601ED (5) of the Corporations Act 2001 (Cth), or an entity that:
 - (i) carries on a business of investment in securities, interests in land, or other investments; and
 - (ii) in the course of carrying on that business, invests funds subscribed, whether directly or indirectly, after an offer or invitation to the public (within the meaning of section 82 of the Corporations Act 2001 (Cth)) made on terms that the funds subscribed would be invested.
 - (x) in the United States, an investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940;
2. For the purposes of Article X.3(1)(b)(viii), "payment card" means:

...

 - (x) in the United States, a credit card, charge card, debit card, check card, automated teller machine ("ATM") card, prepaid card, and other physical or electronic products or services for performing similar functions as such cards, and the unique account number associated with that card, product, or service;

(c) the purchase by its residents in the territory of any other Party of the financial services indicated in:

- (i) paragraph I(b){i}, (ii), (xx) and(iii); and
- (ii) subparagraphs (a)(v) to (xvi) of Article X.2.]

The participant, when revising their offers, will include the following Standard Scheduling Proposal for NT Mode 1 and 2 in FS

[Sections A]

Financial Services

Except as otherwise provided in {Country A's} schedule:

a. 1), 2) {Country A} reserves the right to adopt or maintain any measures with respect to all financial services as referred to in [Article X.2 of Annex [X] on Financial Services of the Agreement] other than the financial services referred to in subparagraphs 1 (b) and (c) of Article X.3 of Annex [X] on Financial Services of the Agreement; and

b. 1), 2) Paragraph 3 of Article II-2 of the Agreement [the ratchet] shall not apply to financial services referred to in subparagraphs 1 (b) and (c) of Article X.3 of Annex [X] on Financial Services of the Agreement [short list]

Should all participants not be satisfied with the outcome of this approach, Article X.4 will continue to be discussed as below:

[AU/CA/CL/CO/CR/KR/MX/PE/US propose; IL/JP/MU/PK considering; CH/EU/HK/IS/LI/NO/PA/TR oppose: Article X.4 National Treatment Commitments

With respect to the supply of a financial service from the territory of one Party into the territory of any other Party, [supplied as a principal, through an intermediary or as an intermediary,] or in the territory of one Party to the service consumer of any other Party,

- a) Article 1-4 (National Treatment) of the Agreement shall apply to only the supply of financial services listed in subparagraphs 1 (b) and (c) of Article X.3, unless a Party otherwise specifies in its Schedule; and
- b) paragraph 3 of Article II-2 of the Agreement shall not apply.]

Article X.5: Monopoly Rights

In addition to (Article XX/monopolies and exclusive services suppliers) of the Agreement, the following shall apply:

- (a) For transparency purposes, each Party shall list in an appendix to its schedule any monopoly rights existing at the date of entry into force of the Agreement it has not otherwise set out in its schedule.
- (b) Notwithstanding paragraph 2 of Article 1 of this Annex/section, this Article applies to the activities referred to in paragraph 2(c) of Article 1 of this Annex/section.

[AU/CA/EU/IS/JP/MU/NO/TR/US propose; TW/HK considering; CO/CR/KR/MX/PE oppose: Article X.6: Financial Services purchased by Public Entities

Notwithstanding (Section/Article X) of the Agreement (on government procurement) and [subject to any conditions, limitations and qualifications that a Party shall set out in its schedule], each Party shall ensure that financial service suppliers of any other Party established in its territory are accorded most-favoured-nation treatment and national treatment as regards the [**EU/HK alt proposal**: government procurement of financial services by the Party in its territory] purchase or acquisition of financial services by public entities of the Party in its territory.]

EU propose: this provision may need to be adapted subject to the discussion on the horizontal Annex on Government Procurement

[CH propose; EU/MU/NO considering; CA/CR/IL/TW/US oppose: Article X.7: National Treatment Limitations Concerning Localization

In scheduling its commitments pursuant to Art. I-4 of the Agreement, no Party may impose requirements with regard to the localization of collaterals on suppliers of other Parties which supply reinsurance services in or into its territory.]

[AU/EU/JP propose; MU considering: Article X.8: Temporary Entry of Personnel (*to be adapted to horizontal M4 provisions*)

1. [Subject to any [AU propose: terms,] conditions, reservations and qualifications that a Party shall set out in its schedule] each Party shall permit temporary entry into its territory of the following personnel of a financial service supplier of any other Party that is establishing or has established a commercial presence in the territory of the Party:
 - (a) senior managerial personnel possessing proprietary information essential to the establishment, control and operation of the services of the financial service supplier; and
 - (b) specialists in the operation of the financial service supplier.

2. [Subject to [AU propose: terms,] conditions, reservations and qualifications that a Party shall set out in its schedule] each Party shall permit, subject to the availability of qualified personnel in its territory, temporary entry into its territory of the following personnel associated with a commercial presence of a financial service supplier of any other Party:
 - (a) specialists in computer services, telecommunication services and accounts of the financial service supplier; and
 - (b) actuarial and legal specialists.]

Article X.9: Financial Services New to the Territory of a Party

Each Party shall permit financial service suppliers of any other Party established in its territory to supply any new financial service that the Party would permit its own like financial services supplier to supply [CL/CH/HK/MU propose: within the scope of the subsectors and financial services committed in its Schedule and [NZ* propose: subject to the terms, limitations, conditions and qualifications established in that Schedule,]] without adopting a law or modifying an existing law.⁵ Notwithstanding (Market Access, paragraph on juridical form), a Party may determine the institutional and juridical form through which the service may be supplied and may require authorisation for the supply of the service. Where such authorisation is required, a decision shall be made within a reasonable time and the authorisation may be refused only for prudential reasons.

Note: MU proposes moving the clause "without adopting a law or modifying an existing law" to the beginning of the paragraph, and revising footnote 5 to read:

"For greater certainty, a Party may issue a new law, regulation or subordinate measure in permitting the supply of the new financial service. It is understood that this provision is intended to give effect to national treatment in respect of new financial services without limiting the legislative powers of a Party under its Constitution."

Article X.10: Transfer of Information]

[CA/CH/CL/CO/CR/EU/IL/JP/KR/LI/MU/MX/NO/PA/PE/TR/TW/US propose; NZ considering: [CL/PE propose; CH/EU/JP/MU/US oppose: Subject to prior authorization by the regulator,] [TR propose; CH/CO considering; EU/JP/US oppose: Subject to any conditions, limitations and qualifications that a Party shall set out in its schedule,] Each Party shall allow a financial service supplier of another Party to transfer information in electronic or other form, into and out of its territory, for data processing where such processing is required in the financial service supplier's ordinary course of business. Nothing in this paragraph restricts the right of a Party to adopt or maintain measures to protect personal data, personal privacy and the confidentiality of individual records and accounts, provided that such measures are not used as a means of avoiding a Party's obligations under the provisions of this Article. [HK proposal: so long as such measures are not used to circumvent the provisions of this Article.]

Article X.11: Payment and Clearing Systems

[NZ* propose: Subject to any conditions, limitations and qualifications that a Party shall set out in its schedule], under terms and conditions that accord national treatment, each Party shall grant to financial service suppliers of any other Party established in its territory access to

⁵ For greater certainty, a Party may issue a new regulation or other subordinate measure in permitting the supply of the new financial service.

payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This paragraph is not intended to confer access to the Party's lender of last resort facilities.

CH is ready to support the proposal by NZ if it is maintained.
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Article X.12 [Self-Regulatory Organizations]

1. When membership or participation in, or access to, a self-regulatory organization is required by a Party in order for financial service suppliers of any other Party to supply financial services in [AU/CA/CL/CO/CR/HK/IL/KR/MX/MU/NZ/PA/PE/US **propose: PK considering; CH/EUIISILIINO/TR opposing;** or into] the territory of that Party, the Party shall ensure that the self-regulatory organization observes the obligations of Articles I-4 (National Treatment) [AU/CA/CL/CO/CR/EU/HK/IL/IS/KR/LI/MX/MU/NO/NZ/PA/PE/PK/TR/TW/US **propose: CH opposing;** and I-[X] (MFN)] with respect to financial service suppliers of any other Party [CH/EU/IS/LI/NO/TR **propose: AU/CA/CL/CO/CR/IL/KR.MX/MU/NZ/PA/PE/US oppose:** resident in the territory of the Party] [CH/NZ* **propose;** subject to any conditions, reservations, and qualifications inscribed in its schedule of specific commitments].

{moved from prior X.15(7)}:

2. Each Party shall [EU/JP/PK/TR **propose; CH/CL considering: AU/CA/CO/CR/HK/IL/IS/KR/LI/MU/MX/NZ/NO/PA/PE/TW IUS oppose:** endeavour to] ensure that a rule of general application adopted or maintained by self-regulatory organisations of the Party is promptly published or otherwise made available in such a manner as to enable interested persons to become acquainted with it.

[AU/CA/CL/CO/CR/EU/HK/IS/JP/KR/LI/MX/MU/NO/PA/PE/PK/TR/TW/US **propose; IL/NZ considering; CH oppose:** Article X.13: Senior Management and Boards of Directors [AU/CA/CL/CO/CR/EU/HK/IS/KR/LI/JP/MX/MU/NO/NZ/PA/PE/PK/TR/TW/US **propose:** Subject to any [AU **propose:** terms] conditions, limitations and qualifications that a Party shall set out in its schedule:]

1. A Party may not require a financial service supplier of another Party with commercial presence in its territory to engage natural persons of any particular nationality as senior managerial or other essential personnel.
2. A Party may not require that [EU/HK/LI/NO **propose:** any member of] [EU/HK/LI/NO **oppose:** more than a minority of] the board of directors of a financial service supplier of another Party with commercial presence in its territory be [EU/HK/LI/NO **oppose:** composed of nationals] [EU/HK/LI/NO **propose:** a national] of the Party or [EU/HK/LI/NO **propose:** a] natural [EU/HK/LI/NO **oppose:** persons] [EU/HK/LI/NO **propose:** person] residing in the territory of the Party or a combination thereof.]

HK proposed para 3 (not subject to scheduling chapeau):

[HK propose; EU considering; AU/CA/CL/CO/CR/IS/IL/LI/MU/MX/NO/PA/PE/US oppose:

3. Notwithstanding paragraph 2, a Party may not require that more than a minority of the board of directors of a financial service supplier of another Party with commercial presence in its territory be composed of nationals of the Party or natural persons residing in the territory of the Party or a combination thereof.]

X.14 has been removed

Article X.15: Transparency- Consolidated version

CONCEPT PAPER

1. **AU/IL/US propose; CA/CL/CO/EU/IS/KR/MU/MX/NO/PE/PK/TR considering:** Annex [XX] (Domestic Regulation) shall not apply to measures within the scope of this Annex.
2. The Parties recognise that transparent regulations and policies governing the activities of financial services suppliers are important in facilitating their ability to gain access to and operate in each other's markets. Each party commits to promote such regulatory transparency: in trade in financial services.

CH proposes to move this paragraph to the Transparency text, mutatis mutandis.

3. **PE considering; AU/HK oppose:** Article [X.2] of Annex [XX] (Transparency- Notice and Comment) shall not apply to procedures and administrative rulings of general application within the scope of this Annex.^{6]}
4. **[AU/CA/CWCL/CO/EU/HK/IS/IL/LIJP/KR/MU/MX/NO/PA/PE/PK/TR/TW/US propose; CR considering: [PE considering:** Notwithstanding Article [XX] of the Core Text,] each Party shall ensure that all measures of general application to which the Annex applies are administered in a reasonable, objective, and impartial manner.]

The inclusion of the paragraph above in this Article may not be necessary depending on how the text of the equivalent obligation in the Core Text article on domestic regulation is resolved.

⁶ For greater certainty, with respect to Article X.2(c), a Party may consider comments received under Article X.2(b) and this paragraph by addressing such comments at the time the Party adopts a Jaw or regulation.]

5. **AU/CA/EU/IL/MU/MX/PE/PK/TR considering:** Where a Party requires authorization for the supply of a financial service, the Party shall:
- a. provide the information necessary for service suppliers or persons seeking to supply a service to comply with the requirements and procedures for obtaining, maintaining, amending and renewing such authorization;
 - b. to the extent practicable, provide an indicative timeframe for processing of an application where domestic laws and regulations provide such a timeframe;
 - c. endeavour to accept:
 - (i) **[TR oppose:** applications in electronic format; and]
 - (ii) copies of documents, **[AU/EU considering:** which are authenticated in accordance with a Party's domestic law,] in place of original documents, unless the Party requires original documents to protect the integrity of the authorization process;
 - d. **[TR propose:** endeavour to,] at the request of the applicant, provide without undue delay information concerning the status of the application;
 - e. in the case of an application considered incomplete for processing under domestic laws and regulations, within a reasonable period of time, to the extent practicable:
 - (i) inform the applicant that the application is incomplete;
 - (ii) at the request of the applicant provide guidance on why the application is considered incomplete;
 - (iii) provide the applicant with the opportunity⁷ to provide the additional information that is required to complete the application, and

where none of the above is practicable, and the application is rejected due to incompleteness, ensure that the applicant is informed within a reasonable period of time;
 - f. in the case of an application considered complete under domestic laws and regulations, within a reasonable period of time after the submission of the application, ensure that the processing of an application is completed, and that the applicant is informed of the decision concerning the application, to the extent possible in writing;⁸ and

⁷ For greater certainty, such opportunity does not require a competent authority to provide extensions of deadlines.

⁸ Competent authorities can meet this requirement by informing an applicant in advance in writing, including through a published measure, that lack of response after a specified period of time from the date of submission of the application indicates either acceptance or rejection of the application. For greater certainty, "in writing" may include in electronic form.

g. in the case of a rejected application, to the extent practicable, either on its own initiative or upon the request of the applicant, inform the applicant of the reasons for rejection and, where applicable under domestic laws and regulations, the procedures for resubmission of an application.

6. **[EU/IS/NO propose; JP considering; HK/PA/TR/US oppose:** Each Party shall make its best endeavour to ensure that internationally agreed standards for regulation and supervision in the financial services sector **[JP considering:** and for the fight against tax evasion and avoidance] are implemented and applied in its territory. [The following section can alternatively be added to Article X.18 Recognition:)] Each Party shall consider the possibility of relying on other Parties' regulations when it finds that those offer an equivalent level of protection for the financial system and the stability and resilience of financial markets

[EU/NO Considering:

After §4, a new §5:

5. **[AU considering:** Where a Party maintains measures relating to licensing requirements and procedures, qualification requirements and procedures affecting trade in financial services, the Party shall:
- a. ensure that such measures are based on objective and transparent criteria⁹ ;
 - b. ensure that the competent authority reaches and administers its decisions in an independent manner;
 - c. [In furtherance of] [Further to] [Domestic Regulation Art. 2 in the core text] ensure that the procedures are impartial, and ensure that the procedures are adequate for applicants to demonstrate whether they meet the requirements, where such requirements exist;
 - d. to the extent practicable, avoid requiring an applicant to approach more than one competent authority for each application for authorization¹⁰ ;

In §5, the following additional sub-paragraphs:

- x-1. **[AU propose:** to the extent practicable, permit an applicant to submit an application at any time;]

⁹ **[AU/CA/CO/CH/EU/IL/IS/NO/PE/PK/TW/US propose:** For greater certainty, such criteria may include, inter alia, competence, ability to supply a service, **[CH oppose; MU considering:** or potential health or environmental impacts of an authorisation decision, and competent authorities may assess the weight to be given to such criteria.])

¹⁰ For greater certainty, a Party may require multiple applications for authorisation where a service is within the jurisdiction of multiple competent authorities.

x-2. [AU **propose**: allow a reasonable period for the submission of an application where specific time periods for applications exist;]

x-3. [AU **considering**: ensure that the authorization fees¹¹ charged by the competent authority, meet each of the following criteria:

- (i) be reasonable
- (ii) be transparent, and
- (iii) do not in themselves restrict the supply of the relevant service;]

x-4. [AU **propose**: ensure that authorization, once granted, enters into effect without undue delay subject to the applicable terms and conditions.]

In §5a, after "...such authorization":

[AU **considering**: Such information shall include, inter alia, where it exists:

- 1) fees;
- 2) contact information of relevant competent authorities;
- 3) procedures for appeal or review of decisions concerning applications;
- 4) procedures for monitoring or enforcing compliance with the terms and conditions of licenses;
- 5) opportunities for public involvement, such as through hearings or comments;
- 6) indicative timeframes for processing of an application;.
- 7) the requirements and procedures;
- 8) technical standards.]]

Article X.16: Prudential Measures

1. Notwithstanding any other provision of the Agreement, a Party shall not be prevented from adopting or maintaining measures for prudential reasons,¹² including for:

- (a) the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier; or

¹¹ Authorization fees include licensing fees and fees relating to qualification procedures; they do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

¹² [CL/CR/KR/MX/PA/PE/PK/TR **propose**; CA/US **considering**; AU/EU/IL/JP/NO **oppose**: It is understood that the term "prudential reasons" includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial service suppliers as well as the safety and financial and operational integrity of payment and clearing systems.]

(b) to ensure the integrity and stability of a Party's financial system.

2. Where such measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under the Agreement.

Article X.17: Treatment of Information

Nothing in this Agreement shall be construed to require a Party to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

Article X.18: Recognition

1. A Party may recognize a prudential measure of any other country in determining how the Party's measure relating to financial services shall be applied. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.
2. A Party that is a party to such an agreement or arrangement referred to in paragraph 1, whether future or existing, shall afford adequate opportunity for other interested Parties to negotiate their accession to such agreements or arrangements, or to negotiate comparable ones with it, under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation, and, if appropriate, procedures concerning the sharing of information between the parties to the agreement or arrangement. Where a Party accords recognition autonomously, it shall afford adequate opportunity for any other Party to demonstrate that such circumstances exist.
3. Where a Party is contemplating according recognition to prudential measures of any other country, paragraph 4(b) of Article 1-6 shall not apply.

[CA/CL/CO/EU/MX/NO/PE/US propose; MU considering: Article X.19: Dispute Settlement [AU/CH/CL/EU/IL/IS/JP/NO/NZ/TR propose: may need to be adapted to DS section]

1. **[AU/CA/CH/CO/CR/EU/HK/IL/IS/JPIKR/LIMX/NO/NZ/PA/TR/TWIUS propose; CL considering: A Panel for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service under dispute.]**
2. **[CA/IL/JP/KR/MX/TW/US propose; AU/HK/NO/PE considering; CH oppose: Where a [Panel] finds a measure to be inconsistent with this Agreement and the measure affects:**

- (a) only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector; or
- (b) the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector that have an effect equivalent to the effect of the measure in the Party's financial services sector.]

MU considers para 2 is of a cross-cutting nature and should be reflected as such in the Annex on dispute resolution

Article X.20: Expedited Availability of Insurance

The Parties recognize the importance of maintaining and developing regulatory procedures to expedite the offering of insurance services by licensed suppliers. These procedures may include allowing introduction of products unless those products are disapproved within a reasonable time; not requiring product approval or authorization for insurance other than insurance sold to individuals or compulsory insurance; or not imposing limitations on the number or frequency of product introductions. If a Party maintains regulatory product approval procedures related to the offering of products within the scope of an insurance licence, the Party shall endeavour to maintain or improve these existing procedures.]

[CA/EU/US propose; CO/CRIJP/PK oppose: Article X.21: Supply of Insurance by Postal Insurance Entities

1. The disciplines set out in this section apply where a Party allows its postal insurance entity to underwrite and supply direct insurance services to the general public. The services covered by this paragraph do not include the supply of insurance related to the collection, transport and delivery of letters or packages by a Party's postal insurance entity.
2. No Party shall [**KR propose; CA oppose:** to the extent possible] adopt or maintain a measure that creates conditions of competition that are more favourable to a postal insurance entity with respect to the supply of insurance services described in paragraph 1 as compared to a private supplier of like insurance services in its market, including by:
 - (a) imposing more onerous conditions on a private supplier's license to supply insurance services than the conditions the Party imposes on a postal insurance entity to supply like services; or
 - (b) making a distribution channel for the sale of insurance services available to a postal insurance entity under terms and conditions more favourable than those it applies to private suppliers of like services.
3. With respect to the supply of insurance services described in paragraph I by a postal insurance entity, a Party shall apply the same [**KR propose; CA oppose:** level of]

regulations and enforcement activities as apply to the supply of like insurance services by private suppliers.

4. In implementing its obligations under paragraph 3, a Party shall require a postal insurance entity that supplies insurance services described in paragraph 1 to publish an annual financial statement with respect to the supply of such services. [**KR oppose**: The statement shall provide the level of detail and meet the auditing standards required under the generally accepted accounting and auditing principles, or equivalent rules, applied in the Party's territory with respect to publicly traded private enterprises supplying like services.]
5. [**EU/KR oppose**: If a Panel under [Dispute Settlement] finds that a Party is maintaining a measure inconsistent with any of the commitments in paragraphs 2 through 4, the Party shall notify the complaining Party or Parties and provide an opportunity for consultations prior to allowing the postal insurance entity to:
 - (a) issue a new insurance product, or modify an existing product in a manner equivalent to the creation of a new product, in competition with like insurance products supplied by a private supplier in the Party's market; or
 - (b) increase any limitation on the value of insurance, either in total or with regard to any type of insurance product, that the entity may sell to a single policyholder.]
6. This section does not apply to a postal insurance entity in the territory of a Party:
 - (a) that the Party neither owns nor controls, directly or indirectly, as long as the Party does not maintain any advantage that modifies the conditions of competition in favour of the postal insurance entity in the supply of insurance services as compared to a private supplier of like insurance services in its market; or
 - (b) if neither the sale of direct life nor non-life insurance underwritten by the postal insurance entity accounts for more than ten percent of total annual premium income in the relevant segment of the Party's market as of [DATE CERTAIN].
7. If a postal insurance entity in the territory of a Party exceeds the percentage threshold referred to in paragraph 6(b) after the date the Party signs the Agreement, the Party shall [**KR propose**; **CA oppose**: to the extent practicable,] ensure that the postal insurance entity is:
 - (a) regulated by and subject to the enforcement of the same authorities that regulate and conduct enforcement activities with respect to the supply of insurance services by private suppliers; and
 - (b) subject to the financial reporting requirements applying to financial services suppliers supplying insurance services.

8. For purposes of this section, postal insurance entity means an entity that underwrites and sells insurance to the general public and is owned or controlled, directly or indirectly, by a postal entity of the Party.]

[EU/US propose; CO/JP/KR oppose: Article X.22: Supply of Insurance by Cooperatives

1. To the extent practicable, a Party should apply the same rules and enforcement activities to insurance services supplied by cooperatives that it applies to like services supplied by other private insurers in the Party's territory. To this end, insurance services supplied by cooperatives should be regulated by the same authorities that regulate other private suppliers of like insurance services in the Party's territory.
2. At a minimum, a Party shall provide that solvency matters related to the sale of insurance by cooperatives shall be subject to regulation by the authorities described in paragraph 1.
3. To the extent that a Party does not follow the principles set out in paragraph 1, its regulation of insurance services supplied by a cooperative should not provide the cooperative a competitive advantage over other private suppliers of like insurance services in the Party's territory.
4. For the purposes of this Article, a "cooperative" means an entity in a Party's territory that:
 - (a) underwrites and sells insurance only to its members and is owned in whole or in part by its members, or an organization consisting of multiple such entities; and
 - (b) is among the largest suppliers of either life insurance or of non-life insurance, as measured by premium income, that account for 75 percent of total premium income from life insurance or of non-life insurance in a Party's territory.

US proposed alternative to subparagraph 4(b):

Has premium income from either life insurance or non-life insurance that ranks the supplier among the suppliers whose premium incomes from such insurance in a Party's territory are the largest, and together account for 75 percent of the total premium income from such insurance in a Party's territory.

5. This Article does not apply to taxation measures.]

* NZ attribution to "subject to scheduling" language in Articles X.9, X.11 and X.12 is pending satisfactory horizontal resolution of its concerns around the reservation of policy space for the Treaty of Waitangi/treatment of indigenous person

See Art X.15, above

Article X.15: Transparency - Consolidated version {April 8, 2016}

1. [CA/CL/CO/MX/PE/US propose; AU/CH/EU/HK/JP/NO/NZ/TR oppose: Articles [XX] of Annex [XX] (Domestic Regulation and/or transparency) shall not apply to measures within the scope of this Annex.]
2. The Parties recognize that transparent regulations and policies governing the activities of financial services suppliers are important in facilitating their ability to gain access to and operate in each other's markets. [CA/CL/CO/EU/JP/KR/MU/MX/PA/PE/TR/TW/US propose: Each party commits to promote regulatory transparency in trade in financial services]

*CH proposes to move this paragraph to the Transparency text, mutatis mutandis.
MU to seek clarification about regulatory transparency.*

3. [CA/CL/CO/PE/TW/US propose: Each Party shall ensure that all measures of general application to which this Annex applies are administered in a reasonable, objective, and impartial manner.]
4. [CA/CO/CRIMX/PE/TR/TW IUS propose: Each Party shall, to the extent practicable,
 - a) [CA/CO/CL/CRIMX/PE/TR/US propose: publish in advance any regulations of general application relating to the subject matter of this Annex that it proposes to adopt [CR considering: and the purpose of the regulation]]; and
 - b) provide interested persons and Parties a reasonable opportunity to comment on such proposed regulations.]
5. [CA/CL/CO/CRIMX/PE/TR/TW/US propose; MU/PK considering: At the time it adopts a final regulation, a Party should, to the extent practicable, [MU/TR propose: and in accordance with its domestic law,] address in writing substantive comments received from interested persons with respect to the proposed regulation.[PE propose: ¹³]

Instead of paragraphs 4 and 5 the EU wants to mirror the language of paragraph 2 of the horizontal Transparency Annex.

6. [CA/CO/MU/MX/PE/TW IUS propose; CR considering: Each Party should, to the extent practicable, allow reasonable time between publication of a final regulation of general application and its effective date.]

¹³ [PE/MU propose: For greater certainty, a Party may address those comments collectively on an official government website]

7. **[AU/CA/CL/CO/CR/EU/HK/ISIL/JPIKRJLI/MU/MXINO/NZ/PAIPE/TR/TW/US propose; CH/PK considering; EU/JP/MU/TR propose; AU/CA/US oppose:** endeavour to] ensure that a rule of general application adopted or maintained by self-regulatory organizations of the Party is promptly published or otherwise made available in such a manner as to enable interested persons to become acquainted with it.]
8. **[CA/CO/PE/MU/TW/US propose:** Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding a measure of general application covered by this Annex.]
9. **[AU/CA/CO/EU/MU/MXIPA/PE/TW/US propose:** Each **[EU/PA propose:** Party] **[CA/CO/MX/PE/US propose:** Party's regulatory authorities] shall make **[CA/CO/MX/PE/US propose:** publicly] available to interested persons **[MU Propose:** ¹⁴] **[CA/CO/MX/PE/US propose:** the] **[AU/PA propose:** domestic] **[EU propose:** its] requirements **[AU/PA propose:** and applicable procedures] **[CA/CO/MX/PE/US propose:**, including any documentation required], for completing **[CA/CO/MX/PE/US propose:** an application] **[AU/HK propose:** applications] relating to the supply of financial services.]
10. **[AU/PA propose; CA/US oppose:** Where a license or an authorization is required for the supply of a financial service, the competent authorities of a Party shall make the requirements for such a license or authorization publicly available. The period of time normally required to reach a decision concerning an application for a license or an authorization shall:
- a) be made available to the applicant upon request;
 - b) be made publicly available; or
 - c) be made available by a combination of both.

[AU/PA propose: Upon] **[CA/EU/TW/US propose:** On the] request of an applicant, **[AU/EU/PA propose:** the Party concerned/concerned Party] **[CA/TW/US propose:** a Party's regulatory authority] shall inform the applicant of the status of its application. If the **[AU/EU/PA propose:** Party concerned/concerned party] **[CA/TW/US propose:** authority] requires additional information from the applicant, it shall notify the applicant without undue delay.]

11. **[AU/CA/CO/CL/CR/MU/MX/PA/PE/PK/TW/US propose; LI considering; CH/EU/HK/ILIIS/JP/NO/NZ oppose:** A Party's regulatory authority shall make an administrative decision on a completed application of a financial service supplier of another Party relating to the supply of a financial service within 120 days, and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings are held and all necessary information is received.

¹⁴ **[MU propose:** interested persons mean persons having sufficient interest in a measure covered by this Annex.]

Where it is not practicable for a decision to be made within 120 days, the regulatory authority shall notify the applicant without undue delay and shall endeavour to make the decision within a reasonable time thereafter.]

12. [**CA/CO/MU/MX/PE/TW/US propose:** On the request of an unsuccessful applicant, a regulatory authority that has denied an application shall, to the extent practicable, inform the applicant of the reasons for denial of the application.]
13. [**EU/NO propose; JP considering; PA/US oppose:** Each Party shall make its best endeavour to ensure that internationally agreed standards for regulation and supervision in the financial services sector and for the fight against tax evasion and avoidance are implemented and applied in its territory. [The following section can alternatively be added to Article X 18 Recognition:] Each Party shall consider the possibility of relying on other Parties' regulations when it finds that those offer an equivalent level of protection for the financial system and the stability and resilience of financial markets.]

<p><i>EU/IL/NZ/TR: stabilization of this Article is contingent on the outcome of horizontal DR and transparency discussions, as well as paragraph 1 of this Article</i></p>
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**Annex ¹ on [International] Maritime Transport Services [MU oppose; and other
Maritime Services] [CA/IS/PA²]**

ARTICLE 1. [AU/NO/PA propose: *Scope and*] Definitions

[AU/CO/EU/HK/IS/MU/NO/PA/PE propose: This Annex applies to measures by ~~the~~ Parties [CH propose: affecting] [CA/MU/PE propose: relating to] trade in maritime transport services] [CH/MU/NZ propose; AU oppose: as set out in each Party's Schedule and subject to any conditions, limitations or qualifications inscribed therein]. For the purpose of this Annex:

- (a) “international maritime transport services³” means [CR considering: maritime transport of [CA/CL/CO/IL/MX/MU/PE/PK/TR propose: cargo][CH/EU/JP/MX/NZ propose; PE propose: freight [EU propose:*⁴]][and/or] passengers between a port of a Party and a port of another Party or a non-Party].
- (b) “maritime auxiliary services” means the following services:
- (i) “maritime cargo handling services” means activities exercised by stevedore companies, including terminal operators, but not including the direct activities of dockers, when this workforce is organized independently of the stevedoring or terminal operator companies. The activities covered include the organisation and supervision of:
 - 1. the loading/discharging of cargo to/from a ship;
 - 2. the lashing/unlashing of cargo;
 - 3. the reception/delivery and safekeeping of cargoes before shipment or after discharge;
 - (ii) “storage and warehousing services” means storage services of frozen or refrigerated goods, bulk storage services of liquids or gases, and storage and warehousing services of other goods, including: cotton, grain, wool, tobacco, other farm products, and other household goods.;
 - (iii) “customs clearance services” (alternatively “customs house brokers' services”) means activities consisting in carrying out on behalf of another party customs formalities concerning import, export or through transport of cargoes, whether this service is the main activity of the service provider or a usual complement of its main activity;
 - (iv) “container station and depot services” means activities consisting in storing containers, whether in port areas or inland, with a view to their stuffing/stripping, repairing and making them available for shipments;
 - (v) “maritime agency services” means activities consisting in representing, within a given

¹ For purposes of this draft, we refer to the maritime transport services text as an “annex”. As the architecture of the TISA takes shape, it is possible that it could be a “chapter” or “section”.

² [CA propose: Nothing in this Annex shall be interpreted to apply to fishing vessels as defined under a Party's domestic law, nor does it apply to vessels or international maritime transport services suppliers that are subject to the *Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.*]

³ [CO/CL/JP/KR/MX/NZ/TR/TW propose; CR/IS considering: For greater certainty, international maritime transport services shall not include cabotage in maritime transport services.]

⁴ [EU propose: Referred to as 'cargo' in some jurisdictions]

geographic area, as an agent the business interests of one or more shipping lines or shipping companies, for the following purposes:

1. marketing and sales of maritime transport and related services, from quotation to invoicing, and issuance of bills of lading on behalf of the companies, acquisition and resale of the necessary related services, preparation of documentation, and provision of business information;
 2. acting on behalf of the companies in organising the call of the ship or taking over cargoes when required;
- vi) “freight forwarding services” means the activity consisting of organising and monitoring shipment operations on behalf of shippers, through the acquisition of transport and related services, preparation of documentation and provision of business information;
- (c) [AU/CA/CO/CR/EU/HK/IL/IS/JP/KR/LI/MU/MX/NO/PA/PE/PK/TR/TW **propose**; NZ **considering**: “multi-modal transport” means the carriage of goods by at least two different modes of transport, [involving] [PE **propose**; **including**] an international sea-leg, on the basis of a single transport document⁵;
- (d) AU/CA/CO/EU/HK/IL/IS/JP/KR/LI/MU/MX/NO/PA/PE/TR/TW **propose**; CR/NZ/PK **considering**: “multi-modal transport operator” means the person on whose behalf the bill of lading/multi-modal transport document, or any other document evidencing a contract of multi-modal carriage of goods, is issued and who is responsible for the carriage of goods pursuant to the contract of carriage;]
- (e) [CA/EU/IS/NO/PA **propose**; KR/PE/MU **oppose**: “feeder services” means the pre- and onward transportation by sea, between ports located in a Party [CA/TR **propose**; EU **oppose**: and in the case of the European Union, between ports in a Member State], of international cargo, including containerised cargo, [AU **propose**: or passengers,] en route to a destination, or from a port of shipment, outside the territory of that Party;]]
- (f) [AU/CA/NO/PE **propose**; PA **considering**; KR/TW **oppose**: “maritime offshore services” means
- (i) maritime transport of goods or persons between any port [CA **propose**: of a Party] and any location [CA **propose**: situated in the offshore area of that Party in relation] [CA **oppose**: associated with or incidental to] [CA **propose**: the] exploration and [CA **propose**: /or] exploitation of [CA **propose**: the mineral or non-living] natural resources⁶ [situated] [CA **propose**: of the Party’s) offshore [CA **propose**: area], or between any such locations, and
 - (ii) [CA **propose**: any commercial] maritime [CA **propose**: activity in relation] to [CA **oppose**: domestic pushing and towing services, including anchor handling, associated with or incidental] to [CA **propose**: the transport], exploration [CA

⁵ For the purpose of this definition, single transport document shall refer to a document that permits customers to conclude a single contract with a shipping company from a point of loading in one country to a point of delivery in another country [CR **propose**: For greater certainty, the scope of application of this definition shall not imply the supply of a transport service.]

⁶ Except living organisms [CO **propose**: and gathering water for cooling purposes].

propose: and/or] exploitation of [CA **propose:** the mineral or non-living] natural resources [CA **propose:** of the Party's offshore area]⁷.]

[CA/CO/IS/JP/KR/TW **propose;** PA **oppose:** (g) “international maritime transport service supplier” means

- (i) any juridical person of a Party, as defined in Article I.02 - Definitions and a branch of any such entity [CO **propose:** , that is engaged in the supply of international maritime transport services] ; or
 - (ii) any juridical person of a non-Party owned or controlled by nationals of a Party, if their vessels are registered in accordance with the legislation of that Party and flying the flag of that Party; or
 - (iii) for purposes of this Annex , a branch of a juridical person of a non-Party with substantive business operations in the territory of a Party, that is engaged in the supply of international maritime transport services.]
- (h) “services at the port” mean pilotage; towing and the tug assistance; provisioning, fueling and watering; garbage collecting and ballast waste disposal; port captain's services; navigation aids; shore-based operational services essential to ship operations including communications, water and electrical supplies; emergency repair facilities; anchorage, berth and berthing services.

[TR/US OPPOSE: ARTICLE 2. Cross-border supply

1. [EU/IS/NO **propose:** Each Party shall undertake commitments without limitations to permit cross-border supply, as described in Article I-1, 2 (a) and (b), of international maritime transport services, except agency requirements in relation to liner shipping.]

[AU/CO/PA **propose:** 1. Each Party shall undertake commitments to permit cross-border supply, as described in Article I-1, 2(a) and (b), of international maritime transport services. Any terms, limitations and conditions on such commitments set out in each Party's schedule in accordance with Article II-1 (Schedule of Market Access Commitment) shall be limited to measures that a Party maintains on the date this Agreement takes effect, or the continuation or prompt renewal of any such measures.]

2. [AU/CO/IS/NO **propose:** Each Party shall undertake commitments without limitations to permit cross-border supply of the following maritime auxiliary services⁸: maritime agency services, freight forwarding services [AU **oppose:** and part of⁹ maritime cargo handling services].]

3. [EU/IS/NO **propose;** AU **considering:** Subject to any terms, limitations, conditions, and qualifications set out in its Schedule, each Party shall permit cross-border supply of feeder services and maritime offshore services.]

⁷ Except living organisms [CO **propose:** and gathering water for cooling purposes].

⁸ For other maritime auxiliary services, commitments only to the extent that these are deemed technically feasible by each individual Party.

⁹ Transshipment (board to board or via the quay) and/or the use of on-board cargo handling equipment.

[**CA/KR propose; AU/NO oppose:** Subject to a Party's schedule of specific commitments, a Party shall not adopt or maintain market access or national treatment limitations on the cross-border supply of maritime transport services.]]

AU/CA/EU/IS/JP/NO/PA: further consideration is required to accommodate necessary flexibility CA: and, if necessary, to determine the appropriateness of including an exceptions clause in this Annex.

ARTICLE 3. Flagged vessels [and recognition of vessel certificates]

[**CO/HK/IS/JP/KR/MX/NO/NZ/PA/TR/TW propose; IL/US oppose:** A Party shall not adopt or maintain any measure that would restrict access of ships engaged in international maritime transport [**NZ propose:** services] and flying the flag of a Party, or international maritime transport services and service suppliers of a Party, to international maritime [**IS propose:** transport] markets and trades on a commercial and non-discriminatory basis.

In determining the nationality of a vessel, each Party shall recognise the nationality of vessels of another Party on the basis of the certificate of registry duly issued by the competent authority of that other Party in compliance with that other Party's relevant laws and regulations.]

ARTICLE 4. Cargo-sharing arrangements

[**AU/CA/CO/EU/HK/IS/JP/NO/KR/PA propose; NZ/TR considering:** A Party shall not adopt or maintain cargo-sharing arrangements in any agreement concerning international maritime transport services. Any such arrangements in any agreement in force or signed prior to the date of entry into force of this Agreement shall be terminated upon the entry into force of this Agreement.]

CH/CL/TR/US consider reflecting linkages to core text on NT and MFN provisions

ARTICLE 5. Repositioning of [CA/IL/KR/NZ/PA/PE propose: empty containers] [EU/IL/IS/NO/TW propose: transport equipment]

[**AU/CA/CO/EU/IL/IS/JP/KR/MX/NO/PA propose; NZ considering:** Subject to [**AU propose:** Article 16 where appropriate] [**AU oppose:** any terms, limitations, conditions and qualifications set out in its schedule], each Party shall permit international maritime transport service suppliers to reposition owned/leased [**AU/EU/IL/IS/NO/TW propose:** transport equipment, such as] empty containers, not being carried as cargo against payment, between ports located in the Party.]

[CH/TR/US OPPOSE: ARTICLE 6. Commercial presence

1. [**CO/EU/IS/NO/PA propose:** Each Party shall undertake commitments without

limitations to permit supply of international maritime transport services through commercial presence, except in relation to the establishment of a registered company for the purpose of operating a fleet under the national flag of the State of establishment.]

2. [NO propose: Each Party shall undertake commitments without limitations to permit supply of maritime auxiliary services through commercial presence¹⁰].

3. [CO/EU/IS/NO propose; PA considering: Subject to any terms, limitations, conditions and qualifications set out in its Schedule, each Party shall permit supply through commercial presence of feeder services [CO considering: and of maritime offshore services.]]

4. [CO/NO propose: Subject to any terms, limitations, conditions and qualifications set out in its Schedule, each Party shall permit supply through commercial presence of pre- and onward road transport services]

[CA/KR propose; AU/NO oppose:

(a) Subject to a Party's schedule of specific commitments, a Party shall not adopt or maintain market access or national treatment limitations on commercial presence for the supply of international maritime transport services.]

5. Limitations on commercial presence for the supply of maritime transport services means any measure that would limit the ability for maritime transport service suppliers of another Party to undertake locally all activities that are necessary for the supply to their customers of a partially or fully integrated transport service, within which the maritime transport constitutes a substantial element.]

AU/CA/EU/IS/JP/NO/PA: further consideration is required to accommodate necessary flexibility [CA: and, if necessary, to determine the appropriateness of including an exceptions clause in this Annex].

[AU/CA/IS/NO/PA/TW propose; JP considering: **ARTICLE 7: Access to and Use of Ports, Services at the Port, Maritime Auxiliary Services and Multimodal Transport Operations**

1. [AU/CA/CH/CR/CO/EU/HK/IL/IS/JP/KR/LI/MU/MX/NO/NZ/PA/PE/TR/TW propose; CL considering: A Party shall not adopt or maintain any measure that would deny [CH oppose; CR considering: international maritime transport] services or service suppliers of any other Party the treatment accorded by that Party to its own like services or services suppliers or those of any other country with regard to:

- access to ports,
- use of infrastructure and services at the port,][CR considering: as well as
- access to and use of [AU/MX/NZ considering: maritime auxiliary services and related services¹¹]].

¹⁰ This [paragraph] shall not be construed as limiting in any manner the ability of a Party to impose public utility concessions or licensing procedures in case of occupation of the public domain for maritime auxiliary services.

¹¹ For the purpose of this Annex, [US oppose: related services] are rental of vessels with crew (CPC 7213),

2. **[CA/IS/JP/MX/NO/TW propose; CR/EU considering:** Where a Party has undertaken commitments on feeder services or maritime offshore services, paragraph 1 of this Article shall apply equally to those services and service suppliers.]
3. **[AU/CA/CO/EU/HK/IL/IS/JP/KR/LI/MU/NO/PA/TR/TW propose; CR/MX/PE considering:** A Party shall not adopt or maintain any measure that would deny multimodal transport operators access to, and use of, road, rail or inland waterways transport services and related auxiliary services on **[AU/EU/JP/KR/MX/TR propose:** reasonable and] non-discriminatory terms and conditions for the purpose of carrying out multimodal transport operations , including the ability of the multimodal transport operator to arrange for the conveyance of its cargo on a timely basis , including priority over other cargo which has entered the port at a later date.]

ARTICLE 12. Domestic regulation

[AU/CO/JP/KR/NO/NZ/PA/TR propose; CA oppose: A Party shall not adopt or maintain technical standards that are not based on objective and transparent criteria, such as competence and the ability to supply the service, and shall ensure that any technical standards do not constitute arbitrary or unjustifiable discrimination or a disguised restriction on trade in services. In determining whether a Party is in conformity with this Article , account shall be taken of international standards applied by that Party, such as international standards adopted by the International Maritime Organisation and the International Labour Organisation. In cases where Parties apply measures that deviate from the above mentioned international standards, their standards shall be based on non-discriminatory, objective and transparent criteria.]

This article should be considered in the context of horizontal DR disciplines that may be negotiated.

ARTICLE 13. Port fees and charges

[AU/CA/CH/CL/CO/EU/HK/IL/IS/JP/KR/LI/MU/MX/NO/NZ/PA/PE/TR/TW propose; CR/PK considering: (a) Each Party shall recognise the International Tonnage Certificate (1969) duly issued **[AU propose:** to a vessel of a Party] **[AU oppose:** in accordance with][AU propose: pursuant to] the International Convention on Tonnage Measurement of Ships, 1969 (the Convention). Tonnage based port charges and expenses shall be collected on the basis of tonnage as stated in the International Tonnage Certificate (1969) or, in case of a vessel not subject to the Convention, the certificate of registry.

[AU/CA/CL/CO/EU/IL/IS/JP/KR/LI/MX/MU/NO/NZ/PA/PE/TW] propose;
CH/CR/HK/PK considering: (b) If a Party decides to carry out an inspection related to the tonnage of a vessel, such inspection shall be carried out in compliance with the Convention.
[TR propose: This inspection shall be limited to verifying that the main characteristics of the ship correspond to the data given in the certificate, and in no case shall the exercise of such

maintenance and repair of vessels (part of CPC 8868) and pushing and towing services (CPC 7214). CPC numbers refer to the UN Provisional Central Product Classification (Statistical Papers Series M No 77, Statistical Office of the United Nations, New York, 1991).

inspection cause any delay to the ship.]

[TR propose; AU/CA/CR/US oppose: ARTICLE 14. Identity documents, entry and transit of seafarers

1. For the facilitation of international maritime transport, each Party shall recognize the valid identification documents of seafarers/crew duly issued or endorsed by the competent authorities of another Party.
2. Subject to immigration laws of a Party, a crew member on a vessel of another Party holding valid identity documents as described in paragraph 1 shall:
 - (a) notwithstanding Article 1.4 of the Annex on Movement of Natural Persons, be admitted to the territory of that Party for temporary shore leave without visa during the stay of the ship in the port of Contracting Parties provided that the list of crew members is delivered to the passport control or the immigration authorities;
 - (b) be permitted to leave the territory of that Party upon termination of his engagement on a vessel as a crew member where this takes place in a port of that Party;
 - (c) be admitted to the territory of that Party for the purpose of joining a vessel as a crew member, provided he is in possession of a declaration from the shipping company or its agent stating that he is to join a specific vessel at a port of that Party.
3. A Party cannot take discriminatory measures against the crew members of another Party during their stay in its ports and territory.
4. If a crew member of a Party requires medical observation or treatment of an illness during the stay of the vessel in a port of another Party, the competent authorities of the latter shall give permission for the said person to stay in its territory for a period [not exceeding [.....] months] until the medical condition of the person is fit for travel. That other Party shall give medical aid in accordance with national legislation.

AU/CA/EU/IS/JP/MU/NO/PA propose; PE considering: ARTICLE 16. Domestic Maritime Transport

Notwithstanding any provision of this Annex, a Party shall not be required to take commitments in respect of maritime transport services to the extent that such services fall within the scope of its own cabotage regime, as such term is defined in its schedule of commitments to this agreement. For greater certainty, services covered by this Annex, which fall within the meaning of cabotage of a Party, should be identified as such within a Party's schedule of commitments.

Annex¹ on Professional Services
[as at September 2015]

Part I- Commitments on Professional Services

1. Scope [and Definition]

- a) This Annex applies to measures by parties affecting trade in professional services. For the purposes of this Annex, “professional services” means the following services **[AU propose: as defined]** in each Party's Schedule:
- (i) **[MX oppose: legal services][AU/JP propose: , including for [CH oppose: domestic law (host country law),] foreign law and international law][CPC86J];**
 - (ii) accounting, auditing and bookkeeping services [CPC 862];
 - (iii) taxation services [CPC 863];
 - (iv) architectural services [CPC8671];
 - (v) engineering services [CPC8672];
 - (vi) integrated engineering services [CPC8673],
 - (vii) urban planning and landscape architecture services [CPC8674];
 - (viii) **[CH/CO/NO propose: engineering related scientific and consulting services [CPC 8675];**
 - (ix) technical testing and analysis services [CPC 8676];]
 - (x) **[AU/CO/NO propose; US/MX/JP oppose: veterinary services [CPC932]];** and
 - (xi) **[AU/CO/NZ/NO propose; KR/MX/TW/CH/JP oppose: private education services [CPC 921-4**, CPC 929**]]**
 - (xii) **[CH propose: construction related engineering services [CPC 51**]]**

AU: Given concerns raised with an “all or nothing” approach, Article 1(b) was deleted and parties will consider what, if any, flexibility is required for each Article in Part I.

New text for this box to be developed to reflect discussions on flexibilities.

[AU propose; CH/EU/KR oppose: 2. Securing existing market access

In sectors where commitments are undertaken in accordance with Article I-3 (Market Access), any terms, limitations and conditions on market access affecting trade in professional services shall be limited to measures that a Party maintains on the date this Agreement takes effect, or the continuation or prompt renewal of any such measures.]

[AU propose; MX considering: 3. Cross-border supply of Professional Services

¹ AU: For purposes of this text, we refer to "Annex". As the architecture of the TISA text takes shape, it is possible that it could be a "Chapter" or "Section".

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[IL/JP/KR oppose: Notwithstanding Paragraph 2, each Party shall undertake commitments without limitations to permit the cross-border supply of professional services as described in Art I-1 :2(a and (b)).]

[CH/LI/KR propose; AU oppose: Subject to a Party's schedule of specific commitments, a Party shall not adopt or maintain market access or national treatment limitations on the cross-border supply of professional services as described in Art I-1:2(a).]

[AU/CO propose: 4. Local presence

- (a) No Party may require a service supplier of any other Party to establish or maintain a representative office or any form of commercial presence, or to be resident **[KR oppose:** or domiciled] in its territory as a condition for **[KR propose:** the cross-border supply of] **[AU/CO propose:** trade in] professional services **[AU/CO propose:** as described in Article I-1:2 (a), (b) and (d) (Mode 1, 2 and 4)].
- (b) Subparagraph (a) shall be subject to conditions and qualifications scheduled in accordance with Article II-2 paragraphs 2 and 3.]

AU: Article 4 will need to be reviewed subject to the development of localisation provisions applicable to all services.

[AU/CO/IS/NO/US propose; IL considering: 5. Foreign Capital Limitations

No Party may, with respect to entities supplying professional services through a commercial presence limit the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment**[US propose:²].**

[IS/NO/US propose: 6. Foreign Partnership or Management Participation Limitations

No Party may, with respect to entities supplying professional services through a commercial presence restrict the nationality of partners or of senior managerial or other essential personnel³.]

[AU/CO/IL/IS/NO/US propose; HK considering: 7. Joint venture requirements

No Party may require a joint venture **[CH/KR oppose:** or joint operation **[AU propose:⁴]**

² **[US propose:** Nothing in this paragraph shall be construed to prevent a Party taking non-discriminatory measures that limit participation in the capital of firms supplying professional services to natural persons licensed to supply such services.]

³ **[US propose:** Nothing in this paragraph shall be construed to prevent a Party taking non-discriminatory measures that limit participation in the partnership or management of firms supplying professional services to natural persons licensed to supply such services.]

⁴ **[AU propose; CO considering:** Joint operation refers to a foreign service supplier providing a service with or

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as a condition for the supply of a professional service [US propose:⁵.]

[AU/CH/CO propose; NO/US considering: **8. Economic Needs Tests**

No Party may adopt or maintain discriminatory economic needs tests, including labour market tests, as a requirement for the supply of a professional service⁶ [CH propose; AU/CO propose: for categories described in a party's schedule of specific commitments].]

[AU/CO/EU/MX/NO propose; PE considering: **9. Business names**

Subject to its laws and regulations, each Party shall permit professional service suppliers of any other Party to use the business names under which they ordinarily trade in the territory of the other Party [PE oppose: [and][JP propose: or] otherwise ensure that the use of business names is not unduly restricted].]

[AU propose; JP oppose: **10. Lawyers Fly-in, Fly-out**⁷

- (a) Where commitments are undertaken for the supply of legal services as described in Article I-1: 2(a) (Mode 1) for foreign law, a Party shall allow entry and temporary stay on a fly-in, fly-out basis without requiring the service supplier to establish or maintain a representative office or any form of commercial presence, or to be resident or domiciled in its territory, or to gain admission or otherwise qualify as a local practitioner, or to register in the Party.
- (b) Where commitments are undertaken for the supply of legal services as described in Article I-1: 2(a) (Mode 1) for international law, a Party shall allow entry and temporary stay on a fly-in, fly-out basis without requiring the service supplier to establish or maintain a representative office or any form of commercial presence, or to be resident or domiciled in its territory, or to gain admission or otherwise qualify as a local practitioner, or to register in the Party.
- (c) The period of stay shall not exceed 90 days in any 12 month period.]

Part II- Trade in Professional Services

11. Encouraging Recognition

through a local entity.]

⁵ [US propose: Nothing in this paragraph shall be construed to prevent authorities of Party from requiring supervision by a professional licensed by those authorities as a condition on the supply of a service by a professional licensed only by the authorities of another Party, where it permits such persons to supply services.]

⁶ [AU propose: Nothing in this paragraph shall be construed to prevent a Party applying economic needs tests in a manner which accords national treatment to professional services and service suppliers of any other Party within the meaning of Article 1:4.]

⁷ [AU propose: Fly-in, fly-out or temporary practice refers to an approach, either through explicit regulation or otherwise, that allows foreign lawyers to enter and provide legal services on foreign law and/or international law on a temporary basis without any registration in the Party.]

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- a) Each Party shall consult with relevant bodies in its territory (“its relevant bodies”) to seek to identify professional services sectors or sub-sectors where two or more Parties are mutually interested in establishing dialogue on issues related to recognition of professional qualifications, licensing and/or registration.
- b) Each Party shall encourage its relevant bodies to establish dialogues with the relevant bodies of other Parties, with a view to recognising professional qualifications, and facilitating licensing and/or registration procedures.
- c) Each Party shall encourage its relevant bodies to take into account existing agreements relating to professional services in the development of agreements on recognition of professional qualifications, licensing and registration.
- d) Each Party may [AU/CA/CL/CO/HK/LI/PE **propose:** encourage its relevant bodies, where feasible, to consider] ~~consider, where feasible,~~ taking steps to implement a temporary or limited licensing regime, such as project specific licensing or registration, based on the foreign supplier's home license or recognised professional body membership (without the need for further examination). Such a temporary or limited licensing regime should not operate to prevent a foreign supplier from gaining a local license subsequent to satisfying the necessary local licensing requirements.

12. Working Party on Professional Services

- a) The Parties shall endeavour to facilitate trade in professional services, including through the establishment of a Working Party on Professional Services, comprising representatives of each Party.
- b) Each Party of the Working Party shall liaise as appropriate to support its relevant professional bodies and regulators in pursuing recognition pursuant to Article 6 (Recognition) and paragraph 9 (Encouraging Recognition). Such support could include, but is not limited to, providing relevant points of contact, facilitating meetings, and providing information regarding the regulation of professional services within each Party's respective territory.
- c) The Working Party shall meet annually, or as agreed by the Parties, to discuss progress towards the objectives in Article I-6 Recognition and paragraph 9. For a meeting to be held, at least two Parties must participate. It is not necessary for representatives of all Parties to participate in order to hold a meeting of the Working Party.
- d) Decisions of the Working Party shall have effect only in relation to those Parties that participated in the meeting at which the decision was taken, unless:
 - i. otherwise agreed by all Parties; or
 - ii. a Party that did not participate in the meeting requests to be covered by the decision and all Parties originally covered by the decision agree.

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CR is still consulting on paragraph 11 and paragraph 12.

Paragraph 12 will need to be considered in relation to horizontal discussions on institutional arrangements.

TR proposes to work on a language for designation of inquiry points in each TiSA Party that will provide information on request of service suppliers of other Parties on areas including, licensing and qualification requirements, the competent authority regarding standards, procedures to obtain or renew any licence or qualification requirements in professional services.

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**TRADE IN SERVICES AGREEMENT
(TiSA)**

Localization Provisions

April 2016

Derived From: Classification Guidance
Dated September 16, 2013
Reason: 1.4(b)
Declassify on: Five years from entry into force of the TISA agreement.

* This document must be protected from unauthorized disclosure, but may be mailed or transmitted over unclassified e-mail or fax, discussed over unsecured phone lines, and stored on unclassified computer systems. It must be stored in a locked or secured building, room, or container.

New Provisions Applicable to All Services

Inclusion in this working document of the following articles from the U.S. proposal for Part III of the core TiSA text is intended to facilitate negotiation and is without prejudice to the final inclusion and arrangement of such articles in the core TiSA text or an annex.

Article X.1: Local Presence

[**AU/CA/CO/CR/JP/KR/MX/NZ/PE/US propose; PK considering; CH oppose:** No Party may require a service supplier of another Party [**MU oppose:** to establish or maintain a commercial presence, or] to be resident [**AU/JP propose:** or domiciled], in its territory as a condition for the supply of a service as described in Article I-1.2(a), (b), and (d).]

Article X.2: Local Management and Boards of Directors

[**AU/CO/HK/JP/NZ/US propose; CA/KR/MU/MX/PE considering:** 1. No Party may require that an establishment supplying services through a commercial presence in its territory appoint to senior management positions natural persons of any particular nationality.

[**AU/CO/JP/US propose; CA/KR/MX/PE considering:** 2. A Party may require that a majority of the board of directors, or any committee thereof, of a juridical person of another Party established in its territory, be of a particular nationality, or resident in the territory of the Party, provided that the requirement does not materially impair the ability of persons of the other Party to exercise control over the juridical person of the other Party.]

[**HK propose; CO oppose:** 2. No Party may require any member of the board of directors, or any committee thereof, of a juridical person of another Party established in its territory, be of a particular nationality, or resident in the territory of the Party.]

[**NZ propose; CO considering:** 2. No Party may require a majority of the board of directors, or any committee thereof, of a juridical person of another Party [established] [supplying services through a commercial presence] in its territory, be of a particular nationality, or resident in the territory of the Party.]]

Article X.3: Local Content and Other Performance Requirements

[**AU/CA/EU/JP/NZ/US propose; KR/NO considering:** 1. No party may, in connection with the supply of a service by a service supplier [**AU/CA/JP/KR propose:** through commercial presence], impose or enforce any requirement or enforce any commitment or undertaking:

- (a) [**AU/CA/EU/US propose:** to achieve a given level or percentage of domestic content;]

- (b) to purchase, use or accord a preference to goods produced [**CA/EU propose:** or services provided] in its territory, or to purchase goods [**CA/EU propose:** or services] from persons in its territory;
- (c) to transfer [**AU/NZ/US propose; CA considering:** a particular] technology [**CA/EU propose:** , a production process] or other proprietary knowledge to a person in its territory; [**US propose:** or
 - (i) to purchase, use, or accord a preference to, in its territory, technology of the Party or of persons of the Party¹; or
 - (ii) that prevents the purchase or use of particular technology in its territory so as to afford protection on the basis of nationality to persons of the Party or to technology of the Party or persons of the Party.]
- (d) [**EU propose:** to export a given level or percentage of goods or services;]
- (e) [**CA/EU propose:** to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with a commercial presence;]
- (f) [**CA/EU propose:** to restrict sales of goods or services in its territory that such commercial presence produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;]
- (g) [**CA/EU propose:** to supply exclusively from the territory of the Party a good produced or a service provided by the investment to a specific regional or world market;]
- (h) [**EU propose:** to locate the headquarters of that investor for a specific region or the world market in its territory;
- (i) to hire a given number or percentage of its nationals;
- (j) to achieve a given level or value of research and development in its territory; or
- (k) to restrict the value or volume of exports or of sales for exports.]

2. No Party may, in connection with the supply of a service by a service supplier through commercial presence, condition the receipt or continued receipt of an advantage on compliance with any requirement:

- (a) [**AU/CA/EU/US propose:** to achieve a given level or percentage of domestic content; [**CA/US propose:** or]
- (b) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory [**CA/EU propose:** ;

¹ For purposes of this Article, the term “technology of the Party or of persons of the Party” includes technology that is owned by the Party or persons of the Party, and technology for which the Party holds, or persons of the Party hold, an exclusive license.

- (c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with a commercial presence; or
- (d) to restrict sales of goods of a commercial presence in its territory by relating such sales in any way to the volume or value of its exports or foreign exchange earnings] **[EU propose: ; or**
- (e) to restrict the value or volume of exports or of sales for exports].

3. Paragraphs 1 and 2 do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs, or to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

4. Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with the supply of a service, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.

5. Paragraph 1 (c) **[EU propose: does]** **[JP/US propose: and (d) do]** not apply:

- (a) when a Party authorizes use of an intellectual property right in accordance with Article 31 **[AU/JP/NZ propose; CA considering:^{2]}** of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement), or to measures requiring the disclosure of proprietary information that fall within the scope of, and are consistent with, **[JP propose: paragraph 3 of]** Article 39 of the TRIPS Agreement; or
- (b) when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal, or competition authority to remedy a practice determined after judicial or administrative process to be anticompetitive under the Party's competition laws **[NZ propose: ^{3]}**.

[EU propose: 6. Notwithstanding the Article X [Reservations], a Party shall neither impose nor maintain any measure inconsistently with its obligations under the WTO Agreement or under Articles [X,Y,Z- provisions in TiSA that restate those obligations] of this Agreement, even if such measure has been scheduled by that Party in Annex.]

[AU/US propose: 6. Provided that such measures are not applied in an arbitrary or unjustifiable manner, and provided that such measures do not constitute a disguised restriction on trade in services, paragraphs 1 and 2 shall not be construed to prevent a Party from adopting or maintaining a measure related to the conservation of living or non-living exhaustible natural resources.]

[AU/CA/JP/US propose: 7. For greater certainty, paragraphs 1 and 2 do not apply to any

² **[AU/JP/NZ propose; CA considering:** The reference to Article 31 includes any waiver or amendment to the TRIPS Agreement implementing paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health (WT/MIN (01)/DEC/2).]

³ **[NZ propose:** The Parties recognise that a patent does not necessarily confer market power.]

commitment, undertaking, or requirement other than those set out in those paragraphs.

8. This Article does not preclude enforcement of any commitment, undertaking, or requirement between private parties, where a Party did not impose or require the commitment, undertaking, or requirement.]].

Article X.4: Scheduling of Localisation Commitments

NOTE: The "Subject to terms, conditions, limitations..." language at the beginning of Articles X.1-X.3 has been deleted in favour of addressing scheduling solely in this Article.

[AU/CA/US propose; CO/JP/NZ/PE considering:

1. Articles X.1-X.3 (Local Presence, Local Management and Boards of Directors, Local Content and Other Performance Requirements) do not apply to any existing measure maintained by a Party to the extent that the Party has inscribed a **[AU propose: term,] condition [AU propose: , limitation]** or qualification in Section B of Part I or Part II of its Schedule, or to the continuation or prompt renewal of such a measure.]

2. If a party amends a measure referred to in paragraph 1 in a way that reduces or eliminates the inconsistency of that measure with Articles X. I-X.3 as it existed immediately before the amendment, a Party may not subsequently amend that measure in a way that increases the inconsistency with Articles X.1-X.3.

3. Articles X.1-X.3 do not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors or activities as set out in Section A of Part I of each Party's Schedule.]

X.5: Exceptions

[US propose: 1. Nothing in [Articles X.1 - X.3] shall be construed to prevent any Party from taking any action which it considers necessary for the protection of its own essential security interests.]

[AU/CA/CL/TW/CO/JP/KR/MU/PE/US propose: 2. Articles X.1-X.3 do not apply to government procurement.]

[CA/CO/MU propose; AU/PE considering: 3. Articles X.1 and X.3 do not apply to financial services.]

[CA/CO/MX/US propose: *The applicability of Articles X.1, X.2, and X.3 to certain financial services is under consideration.*]

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

Dear [ISA Participant/Lead Negotiator],

The United States would like to propose the following procedures for the handling of documents exchanged during our negotiations for an International Services Agreement. We seek written confirmation that you agree with these procedures and will take the actions described below.

- First, all participants agree that all documents related to the development of a new International Services Agreement, including negotiating texts, proposals of each participant, accompanying explanatory material, discussion papers, emails related to the substance of the negotiations, and other information exchanged in the context of the negotiations, is provided and will be held in confidence, unless each participant involved in a communication subsequently agrees to its release. This means that documents may be provided only to (1) government officials, or (2) persons outside government who participate in that government's domestic consultation process and who have a need to review or be advised of the information in these documents. Anyone provided access to the documents will be informed that they cannot share the documents with people not authorized to see them. All participants will hold these documents in confidence for four years after entry into force of the International Services Agreement, or if no agreement enters into force, for four years after the last round of negotiations.
- Second, while the documents are confidential, each participant may mail, e-mail, fax, or discuss these documents over unsecured lines with the groups of people mentioned above (i.e., government officials and persons who participate in the domestic consultation process). The participants may also store these documents in a locked file cabinet or within a secured building; that is, the documents do not need to be stored in safes. Each participant can also create and store these documents on computer systems that are not subject to special security measures.
- Lastly, participants are to mark the documents they create in a manner that makes clear that the documents are to be held in confidence.

The policy underlying these actions is to maintain the confidentiality of documents, while at the same time allowing the participants to develop their negotiating positions and communicate internally and with each other. We look forward to receiving confirmation that you agree with this proposal.

Yours sincerely,

A paper submitted to participants by the European Union in May 2012, shortly after the start of the process.

On one page it sets out objectives and concepts (such as elimination of capital caps; or additional rules on postal and courier services) for the process.

An Annex to the previous paper, also submitted by the European Union in May 2012, provides details on the proposed additional rules on postal and courier services.

A Plurilateral Negotiation Built on GATS

Non- Paper for Discussion

Objectives

A plurilateral initiative on services, as currently discussed among a group of WTO members, can make an important contribution to improving the multilateral governance of services trade if the conditions are set right. In order to achieve this objective, a plurilateral agreement would need to

- a) be designed in a way that does not create an alternative to the GATS and facilitates progressive multilateralisation. Therefore, a plurilateral agreement would need to build on the structure and obligations that are laid down in the GATS;
- b) aim at ambitious results in terms of market access;
- c) develop rules underpinning those market access commitments.

Concepts

- a) A plurilateral agreement should pave the way for its progressive multilateralisation. To this end, it should build on the GATS obligations and techniques with which WTO Members are all familiar, in particular regarding the scheduling of commitments. The following core GATS provisions and obligations are important in this regard: scope (Art I), market access (Art XVI) and national treatment (Art XVII), exceptions (Art XIV and XIV bis), definitions (Art XXVIII) as well as the obligations contained in the GATS Annexes. Using a different approach in an agreement among countries accounting for the bulk of international trade in services would result in the development of an alternative set of services trade rules, which would undermine the multilateral trading system.
- b) A plurilateral agreement should add value in terms of market access by consolidating openness as well as addressing particularly harmful barriers to trade in services. A clear starting point, such as extending the openness consolidated in participants' FTAs, as well as standards, such as the substantial elimination of foreign equity caps, are important tools in this regard.
- c) A plurilateral agreement would also be an opportunity to develop **strong rules** underpinning services liberalisation. The GATS contains **built-in mandates** to develop rules, e.g. on domestic regulation and government procurement. Plurilateral negotiations should advance the creation of such disciplines and thus further the work in the WTO committees. **Additional disciplines**, e.g. of a regulatory nature, can be designed for individual sectors on the basis of Article XVIII – Additional Commitments. Examples would be an enhanced reference paper for telecommunications / ICT services or a new reference paper on postal and courier services (see more details in annex). Members could also explore the incorporation of rules on **related topics** such as electronic commerce, for example.

<p style="text-align: center;">Postal and Courier Services: Potential Elements for a Reference Paper</p>

The postal and courier services sector, which offers a key communications infrastructure with high economic and social importance, has undergone liberalisation in many countries over the last two decades. In a communication of the European Communities and their Member States to the CTS SS in 2005 (S/CSS/W/61), the European Union proposed the possibility of devising a reference paper on postal and courier services which WTO Members could adhere to by inscribing the principles as additional commitments in their schedules of commitments, as foreseen in Article XVIII of GATS.

The European Union has further developed the idea and gained experience with such principles in its bilateral free trade agreements, such as the EU-Cariforum EPA, which includes a specific regulatory chapter on postal and courier services.¹

For a discussion about additional commitments on postal and courier services following Article XVIII of GATS, the following questions are particularly relevant:

- the classification of postal and courier services, particularly whether a distinction of postal and courier is necessary or whether the services should be classified by types of postal items delivered, combined with additional qualitative differences in the provision of the service;
- definitions, such as individual licence/individual authorisation scheme, universal service etc.;
- minimum regulatory principles, such as the elimination of anti-competitive practices, access to universal service/exclusive rights if such are used by a Member, basic principles for licensing, if licensing is used, in particular as regards non-discrimination and transparency of procedures and independence of the regulator.

¹ See http://trade.ec.europa.eu/doclib/docs/2008/february/tradoc_137971.pdf, starting at page 34

A paper submitted to participants by Australia in June 2012.

Australia proposes to introduce the ratchet and standstill obligations even if a GATS type positive list is used to schedule commitments

Accommodating standstill and ratchet provisions in positive listing of sectors

- For discussion -

Objective

The objective of this non-paper is to illustrate how the mechanisms of standstill and ratchet could be incorporated in a plurilateral services agreement which would use the GATS provisions relating to specific commitments (notably Articles XVI, XVII and XX).¹

Members could agree on rules and mechanics for incorporating standstill and ratchet provisions into their schedules of specific commitments, for example by means of an Understanding on Specific Commitments (inspired by the Understanding on Financial Services which incorporates a standstill provision). Members would adhere to the Understanding on Specific Commitments which would be part of the agreement. Such an Understanding could be easily integrated into the GATS at the appropriate moment.

Rules and mechanics

A standstill obligation would apply to all commitments that a Member takes in its schedule, except for negotiated exceptions. For these exceptions, the commitment in the schedule would not reflect actual liberalisation but maintain policy space. Such exceptions would be marked, for instance, with an infinity sign (∞).

The ratchet mechanism would be applied to all commitments that are subject to the standstill, except for negotiated exceptions. Such exceptions would be marked, for instance, with a triangle (Δ).

Examples

Scheduling	Meaning
Foreign equity limited to 49%	49% is the actual limit as per legislation. If the legislation was amended to become more liberal, the higher limit would be automatically bound.
Foreign equity limited to 49% ∞	Majority foreign ownership may be possible, but the country retains discretion to limit foreign equity to 49%. Legislative change would not affect such discretion.
Foreign equity limited to 49% Δ	49% is the actual limit as per legislation. If the legislation was amended, it would not be automatically bound.

¹ This illustration is without prejudice to the position of the EU with respect to the incorporation of standstill or ratchet disciplines in a possible plurilateral agreement.

Draft provisions in the Understanding on Specific Commitments

Standstill

Any conditions, limitations and qualifications to Members' specific commitments shall be limited to measures in force in the territory of the Member at the time the schedule of specific commitments enters into force ("inconsistent measures"), unless they are marked with an infinity sign (∞).

Ratchet

If a Member amends a measure inscribed in its schedule of specific commitments in a way that reduces or eliminates the inconsistency of that measure with Articles XVI (market access) and/or XVII (national treatment), such amendment shall be binding on the Member pursuant to this Agreement.

This shall not apply to measures marked with a triangle (Δ) or to measures marked with an infinity sign (∞).

A paper submitted to participants by Mexico in June 2012.

Mexico proposed a negative listing with ratchet and standstill, and to liberalize at least as much as the best existing Regional Trade Agreement (RTA).

NON-PAPER

An approach for an ambitious outcome in trade in services in two phases

We believe that the main objective of an international services agreement has to be the achievement of the best possible level of commitments in market access and, at the same time, to improve and add specific disciplines on horizontal and/or sectoral basis. While this is attainable with the current plurilateral configuration of countries, in our view any outcome has to consider an embedded mechanism to extend, at a certain moment in the future, the level of commitments to the rest of the WTO Membership. How this could be achieved and how to determine the criteria to arrive to such a moment is still to be discussed.

With the intention to move in a sequenced manner towards the main objective, as a way to provide confidence to the possible new entrants on the true motivation of this exercise and more importantly, with the idea of achieving a first, short-term result to regain confidence in the DDA, we propose the following two-steps approach:

1) A short-term, pragmatic, result in terms of market access commitments, i.e., after no more than a year of negotiations. This could be attained if all participant Members agree to bind their best outcome in RTAs, under the negative listing approach, a stand-still commitment, and including a ratchet clause to provide a dynamic liberalization commitment. If the time allows, new market access would be negotiated. The same applies to new or improved disciplines. Otherwise, these two improvements in the agreement could be achieved in the next phase.

The results of this first phase would be captured in a legal instrument to be notified under GATS Article V. The agreement would contain provisions in order to open it to new participants, to include new and/or improved disciplines as well as more and/or better market access commitments. This clause could also contain the criteria to migrate from an RTA to a multilateralized instrument (e.g. critical mass level).

2) The second phase would start short after the entry into force of the agreement under phase one and it should aim at the achievement of the main objective described above. It would include negotiations to improve market access commitments beyond the current level of liberalization. It would also include negotiations on improved and/or new disciplines on horizontal or sectoral basis.

A paper submitted to participants by the USA in June 2012.

The US sets out a pathway to multilateralization.

Pathways to Multilateralization

One of the most exciting aspects of the plurilateral discussions on services is the prospect of bringing new ideas and approaches into the multilateral arena. This paper explores possible pathways for taking the results of a plurilateral agreement into the World Trade Organization (WTO).

1) Whole agreement adopted by WTO Members

The traditional means of multilateralization involves WTO members collectively negotiating and ultimately adopting an agreement, meaning that all WTO Members take on the rights and obligations of the agreement. Since the General Agreement on Trade in Services is already in force, this would essentially entail WTO members agreeing by consensus to amend the GATS.

2) Agreement incorporated into the WTO as the 5th plurilateral agreement

Article X.9 of the Marrakesh Agreement provides for Members to incorporate plurilateral agreements into the WTO body of agreements. The WTO agreement itself would be amended, which requires a consensus decision by the Ministerial Conference. In joining the body of WTO agreements, the new agreement would be able to apply the WTO dispute settlement procedures.

3) Elements adopted by the WTO

There are a number of possible means by which Members could incorporate elements of a new agreement within the GATS. For example, new disciplines on data flows or domestic regulations developed through a plurilateral agreement could be proposed for adoption by the WTO. WTO members would consider some proposals and reject others. Those proposals that receive sufficient interest to pursue would then be subject to a multilateral negotiating process. The end result would look very different from the starting point, but the plurilateral agreement will have served a valuable role as an incubator of new ideas.

The same is true if the plurilateral agreement applies techniques like a standstill, a ratchet, or a negative list. The negative list is simply a scheduling methodology - one that has already been applied under the GATS with respect to the most-favored-nation obligation. Nothing in the GATS prevents Members from proposing to modify the scheduling methodology of Article XVI (Market Access) and/or Article XVII (National Treatment), either for the WTO as a whole or among a group of Members.

Members could also apply key components of the negative list approach. For example, what if existing Schedules of Commitments were supplemented with an index listing sectors, subsectors and modes that are missing? Similarly, what if an index was prepared that identifies where scheduled limitations are more restrictive than actual practice (just as with manufactured goods Members identify both the bound and applied tariff levels)? These simple scheduling techniques would vastly improve the transparency and comparability of the Schedules.

4) Accession model

An accession approach is another readily-available means of multilateralizing an agreement. Like the WTO agreements themselves, additional members could join the plurilateral agreement individually. As the membership expands, the agreement moves progressively toward multilateral membership.

An accession model would be viable even if the WTO takes up some components of the plurilateral agreement because the original agreement would continue to exist in its "pure" form. In addition, the parties to the plurilateral agreement could continue to work on new issues that could be fed into the WTO for multilateral consideration.

5) Critical mass, External MFN, or GATS MFN

Another often-cited approach for multilateralization is the unilateral extension of new plurilateral commitments to all WTO members on a most-favored-nation (MFN) basis. The WTO as a whole would take no action. The agreement would be "multilateralized" in the sense that it would be incorporated into the multilateral trading system, but it would not truly be a "multilateral agreement" because only a subset of WTO members would adhere to its obligations.

The precedent for such an approach is the Information Technology Agreement (ITA), where the parties voluntarily extended their goods market access commitments to all WTO members by unilaterally modifying their WTO tariff schedules.

There are some significant differences between the ITA and the proposed plurilateral services agreement. Because the ITA was a plurilateral agreement that applied only to selected products rather than all goods, the only way the agreement could be implemented consistent with the GATT MFN obligation was through extending the commitments to all WTO members. To justify free riders, the parties argued that the agreement achieved a balance among a "critical mass" consisting of the most significant trading partners for the relevant goods. Therefore the benefits the parties received by implementing the agreement exceeded any costs incurred by free riders.

The same logic does not apply for the plurilateral services agreement. Because the proposed agreement would encompass all service sectors, it could be implemented plurilaterally pursuant to GATS Article V. There would be no legal rationale to permit free riders. Since the parties would be able to obtain any economic benefits without extending equivalent treatment to all WTO members, there would also be no economic rationale.

The logic of a critical-mass approach for a services agreement then appears to rest on the policy benefits of bringing the agreement underneath the umbrella of the WTO, which principally include having recourse to the WTO dispute settlement system and bolstering the role of the WTO as the central repository for trade agreements.

Meanwhile, the prospect of extending the benefits of the plurilateral agreement to all WTO members without receiving compensation could have adverse effects on the incentives of existing and potential parties:

- Existing plurilateral participants could be more conservative in offering market access in order to preserve their future negotiating position relative to non-parties;

For discussion only

- Potential plurilateral candidates could choose not to join the negotiations if they believe they will ultimately receive any benefits for free; and
- The major emerging markets needed for critical mass may not be willing to negotiate to join the agreement if they know that, as soon as they do, their concessions would be given away to the full WTO membership.

In addition, once critical mass is reached, there would be little incentive for new Members to accede, which could effectively terminate the agreement. Finally, the existence of a separate tier of commitments within the same agreement could further exacerbate the disparity in treatment among Members, with poorer and smaller Members left behind with regard to the adoption of principles aimed at supporting trade and economic development.

A paper submitted to participants by the European Union in July 2012, shortly after the start of the process.

This document already contains the complete architecture of the future agreement, a central text replicating GATS (“core provisions”); Understandings; Sectoral rules (Chapters); and Schedules of specific commitments.

The EU proposes however that the schedules shall be of the same type as GATS

A modular approach to the architecture of a plurilateral agreement on services

At the occasion of previous discussions among the RGF group, many members have repeatedly expressed their attachment to the ultimate objective of the multilateralisation of what would first be a plurilateral agreement on services, allowing therefore this initiative to eventually support and reinforce the multilateral trading system. The latter has notably been highlighted in the press release of July 5. The present paper shows the views of the [EU] on how this could be achieved. It provides for an architecture of a plurilateral agreement on services which allows for a high level of ambition for both market access and rules, while building on the GATS and thus facilitating the docking of the possible agreement in the WTO.

Such architecture could be built around a series of modules, easily exportable: (i) a central pillar, which would exactly replicate the relevant GATS provisions; (ii) a series of chapters dedicated to sectors and/or to specific rules; (iii) an understanding on scheduling (which could contain provisions on issues such as standstill, ratchet or transparency; and (iv) specific commitments enshrined into GATS-type schedules (however enhanced by the understanding on scheduling). The central pillar would ensure the compatibility of the plurilateral agreement with the GATS. At the moment when RGF members would consider that enough critical mass was reached, the specific commitments could be brought into the multilateral system, simply by docking the new rules and the understanding on scheduling to the GATS and by replacing the existing GATS specific commitments by the "plurilateral specific commitments" based on the understanding. The new rules developed could be brought into the multilateral system via the GATS article XVIII mechanism and become new understandings or reference papers. The core provisions of the plurilateral agreement would disappear, as they would become redundant with the GATS.

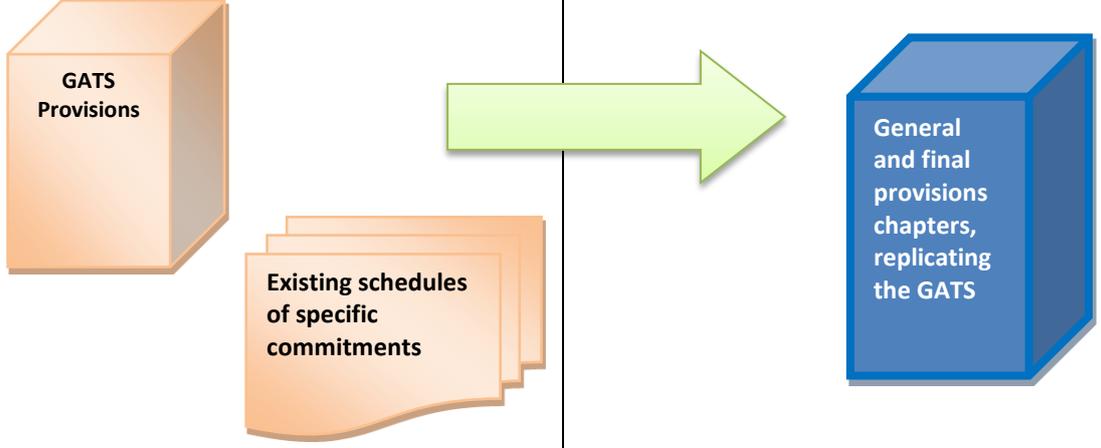
This paper considers the three phases of the initiative: the first phase, during which the plurilateral agreement is negotiated; the second phase during which additional participants might join the plurilateral agreement; and the third phase, which is the multilateralisation of the initiative, once the defined critical mass has been reached. During phases one and two, the agreement could be temporarily protected from the GATS MFN obligations by GATS article V.

Phase 1: Negotiating a plurilateral services agreement

A plurilateral agreement on services could be built on the basis of three modules: a set of core provisions; a set of rules and the schedules of specific commitments.

1. A central pillar replicating the GATS provisions

For years, the GATS has provided definitions and standards of treatment, which have shaped many bilateral agreements. By replicating those provisions into the plurilateral agreement, we would create a solid basis for the negotiation of additional services liberalisation, while ensuring that commitments undertaken are fully compatible with existing GATS commitments and could eventually be brought to the WTO. Box 1 below shows what essential elements could be taken from the GATS and could consist in a platform to build upon.

The GATS	Extracting the relevant GATS provisions
	
	<p>Indicative list of provisions</p> <p>Chapter I - General Provisions</p> <p>Article 1.1 – Scope (GATS article I + GATS Annex on air transport) Article 1.2 – Definition (GATS article XXVIII) Article 1.3 – Transparency (GATS article III)</p> <p>Chapter 2 – Specific commitments</p> <p>Article 2.1 – Market access (GATS article XVI) Article 2.2 – National treatment (GATS article XVII) Article 2.3 – Additional commitments (GATS article XVIII)</p> <p>Chapter 8- Final provisions*</p> <p>Article 7.1 – General exceptions (GATS article XIV) Article 7.2 – Security exceptions (GATS article XIVbis) Article 7.3 – Payment and transfers (GATS article XI) Article 7.4 – Balance of payment (GATS article XII)</p>

Box 1 – A central pillar replicating the GATS provisions

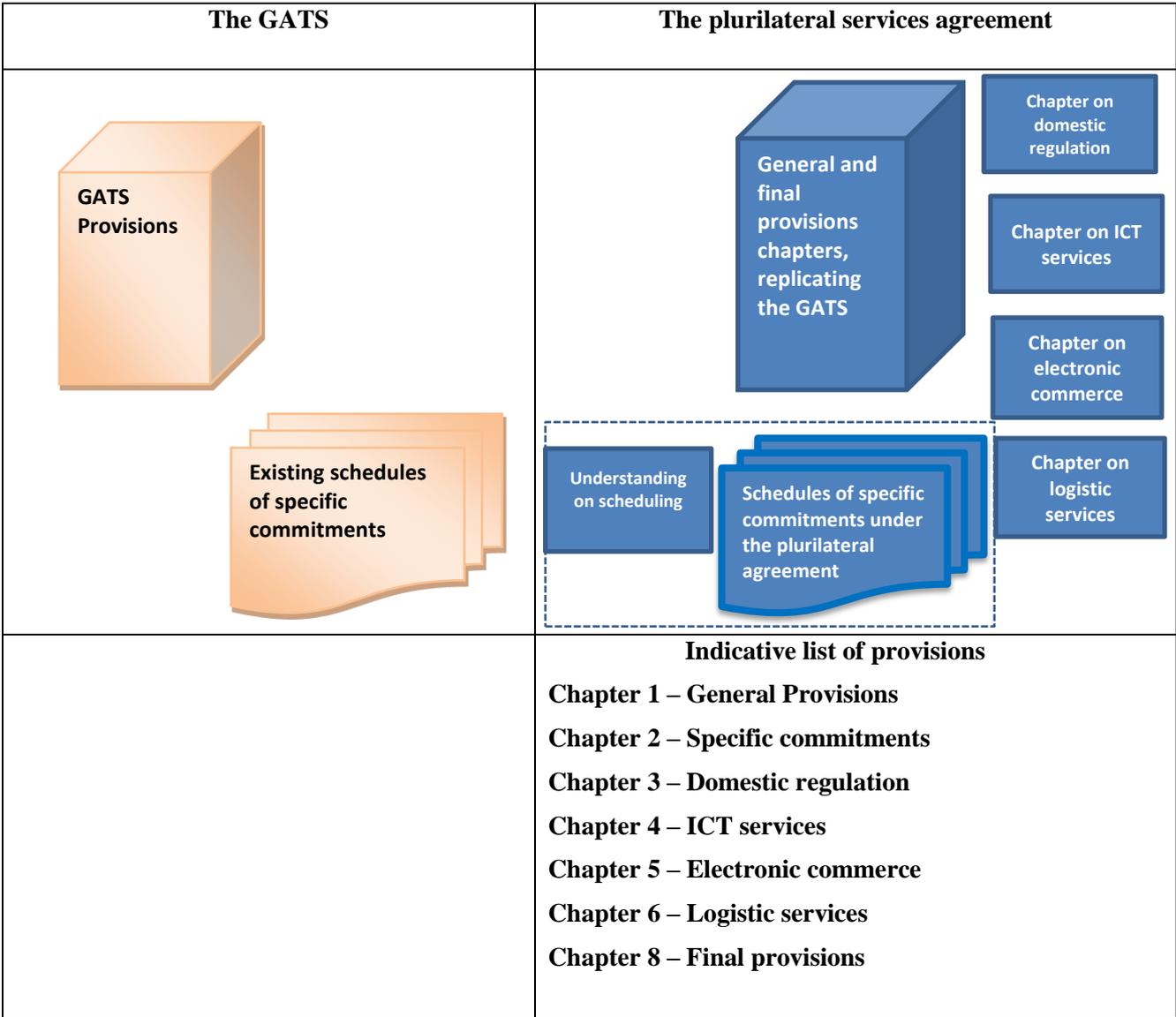
* This indicative structure does not cover the issue of dispute settlement, which is to be discussed at a later stage.

2. Develop additional rules and disciplines

The Parties to the plurilateral agreement could develop additional rules and disciplines to be contained in additional chapters. Those could cover domestic regulation, e-commerce, logistic services, ICT services or scheduling rules. They would reflect the willingness of the Parties to deal with issues beyond the core market access and national treatment provisions, notably by building upon existing work of the WPDR or the existing reference papers. Those chapters would complement the general provisions chapter. Being self-contained, those chapters would easily be exportable at the time of multilateralisation, notably via the mechanism of GATS article XVIII. Box 2 shows how the different elements, or modules, could top up the central pillar.

3. and 4. Define the specific commitments and the rules on scheduling

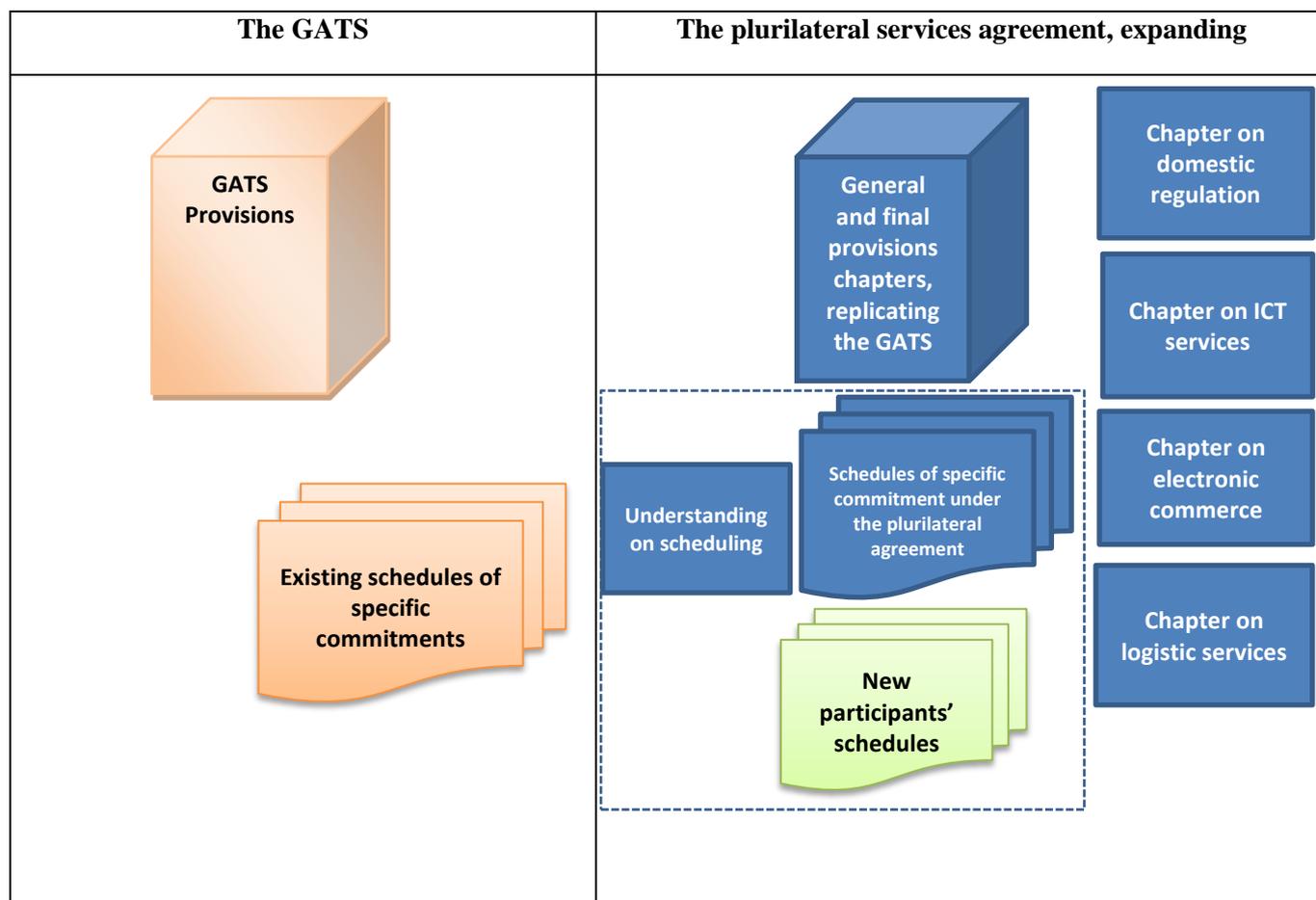
Through negotiations, the parties would determine the specific commitments, to be inscribed in GATS-like type of schedules. The latter could however be enhanced according to rules and concept inscribed in the understanding on scheduling.



Box 2 – Potential structure of a plurilateral services agreement

Phase 2: A living and open agreement

The plurilateral agreement would be by nature open to new participants and would naturally evolve as more WTO members join. Their commitments (enhanced by the understanding on scheduling) would be added to the already existing schedules of the initial members, as indicated in Box 3.



Box 3 – The plurilateral agreement expands through new members

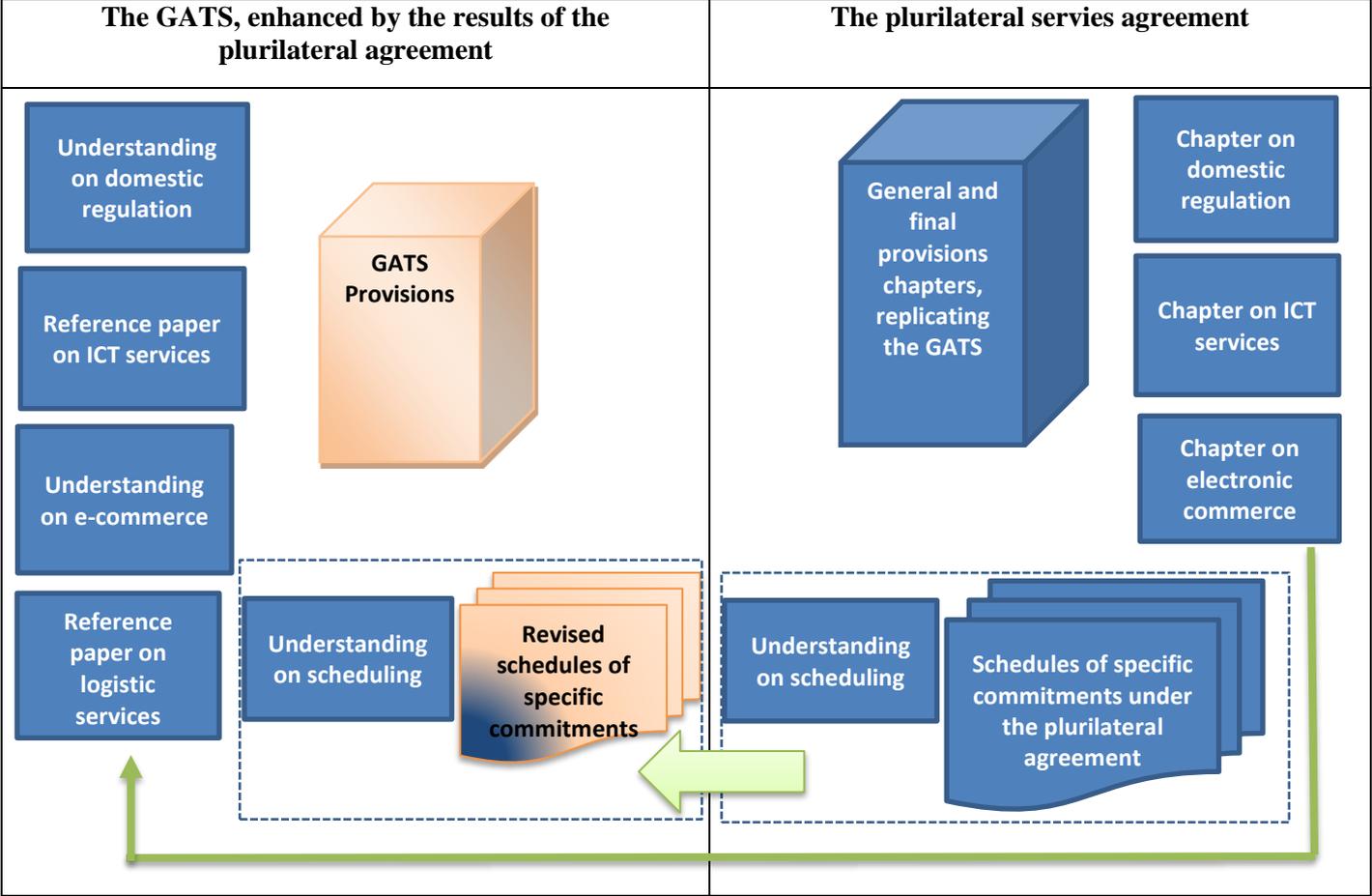
Phase 3: Multilateralisation of the plurilateral agreement

As soon as a given critical mass has been reached or when the Parties decide to do so, the plurilateral agreement could be multilateralised, i.e. its substance would provide for an update of existing commitments and rules of the multilateral trade system.

The architecture of the plurilateral agreement would be critical to make this multilateralisation possible, as shown in Box 4.

At the time of the multilateralisation, the central pillar would become redundant with the provisions of the GATS and could disappear. The existing GATS specific commitments would be updated unilaterally by the participants to the plurilateral. The commitments would refer to the understanding on scheduling, which would contain all rules pertaining to, for instance, standstill, ratchet or references to legislation. The sectoral chapters would be turned into either understanding or reference papers, in accordance with GATS article XVIII. While part of those rules would be new (such as the work on domestic regulation), some rules would update and expand existing tools (for example: consolidation of the e-commerce moratorium

through an understanding on e-commerce; update of the GATS reference paper on telecommunication through a GATS reference paper on ICT services ...).

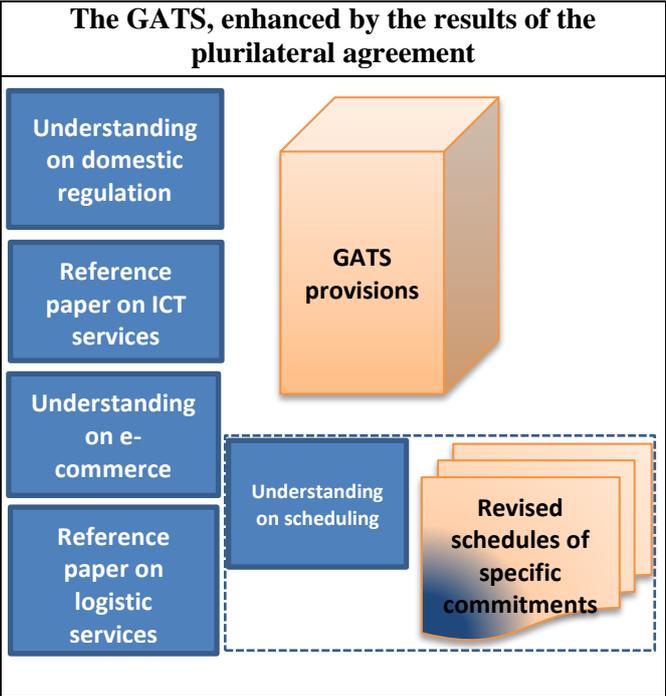


Box 4 - Multilateralisation of the plurilateral agreement

Conclusion

By following this approach, the participants to the plurilateral agreement would take part in a greater liberalisation of trade in services while eventually reinforcing the multilateral trading system. If the existing GATS architecture is respected, a smooth transition to a multilateralisation of the results of the plurilateral services negotiations can be ensured. As a consequence, the multilateral system would be reinforced by this initiative, as shown in Box 5.

Box 5 - The GATS, complemented with the results of the plurilateral services agreement



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 sectors¹ 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.

A document containing "Reflections of the chair", i.e. xxxxxxxxxxxxxxxx, at the conclusion of the Round taking place on 2-3 and 5 October 2012, which was "the fifth round" of discussions.

This key document reflects the outcome of the negotiation taking place informally from January to September and the consensus reached by the parties to the process.

All the elements of the Agreement are already clearly defined at that time. A hybrid approach (mixed positive and negative), ratchet and standstill, and "removal of existing measures".

Attached is the list of participants of the fifth round taking place on 2-3 and 5 October 2012. A high level of representation.

Chair's Reflections and Proposal for Next Steps

The fifth round of discussions on a plurilateral services agreement took place from 2-3 October in Geneva. The discussions concentrated on moving towards consensus on ambition and architecture, and covered new and enhanced disciplines to be included in the agreement.

There was a very rich discussion. Many participants demonstrated significant flexibility, despite strong preferences, to find a way forward on an agreement with high ambition, that would attract broad participation, and which could be multilateralised in the future.

Based on these discussions, this statement reflects the Chair's views on focus areas for future work that could lead to a consensus on a framework for the agreement, including the following possible core elements:

- incorporating core GATS provisions including, at least, articles on scope, definitions, market access, national treatment and exceptions;
- a horizontal commitment for national treatment, subject to appropriate exceptions and reservations;
- a GATS approach to listing commitments for market access;
- standstill and ratchet applied to national treatment, subject to appropriate exceptions and reservations - further technical work will be required to understand how this could be operationalized;
- on market access, have as one of the negotiating objectives the binding of autonomous levels of liberalisation, subject to appropriate exceptions; and
- negotiations to include new market access, encompassing both new bindings and removal of existing restrictive measures.

In addition, we identified five elements of a tool kit for multilateralisation:

- using the GATS as a basis for our work to ensure compatibility with WTO commitments and facilitate broad participation;
- including an accession clause;
- in principle, including a mechanism that would enable the parties to multilateralise the agreement on the basis of a critical mass (critical mass to be defined later);
- taking components of the plurilateral agreement to the relevant WTO committee-negotiations (for example, on domestic regulation); and
- securing WTO consensus to include the agreement as a fifth GATS plurilateral agreement (but noting this is not possible at this time).

There was significant interest in including new and enhanced disciplines in any outcome. Participants identified a relatively long list of topics and will need to put forward proposals to drive these discussions. To facilitate negotiations proposals should be made prior to discussions in December where possible. This would not preclude participants bringing forward proposals later in the negotiations.

A logical next step for our work to facilitate a consensus around these core elements would be to examine how they could be operationalised in schedules. Participants offered to develop and circulate mock schedules or examples of how commitments could be framed ahead of discussions in November. This would be to prepare the ground for possible agreement on a framework in December and allow us to progress to serious negotiations in 2013.

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]

AUSTRALIA-EU NON-PAPER

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.

AUSTRALIA-EU NON-PAPER

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.

A Paper jointly submitted by the EU and Australia in January 2013.

It proposes a model schedule.

Australia-EU model with Canadian examples

Example 1: Scheduling a sector that is fully OPEN
~~Subject to standstill and ratchet~~ *[meaningless for a sector that is fully open]*

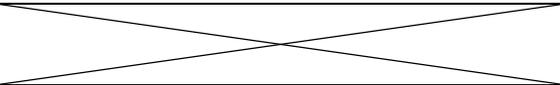
Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
I. HORIZONTAL COMMITMENTS			
Party undertakes its specific commitments in accordance with Part II of Agreement			
RESERVATIONS pursuant to Part II, Article Y		Pursuant to Part II, <i>Article Y</i> [National Treatment, standstill and ratchet], <i>Party</i> reserves the right to adopt or maintain any measure in the specific sectors, sub-sectors or activities listed below: -	
RESERVATIONS pursuant to Part II, Article YY		<i>Party</i> maintains limitations on national treatment in all sectors for: -	
ALL SECTORS INCLUDED IN PART II OF THIS SCHEDULE			
II. SECTOR-SPECIFIC COMMITMENTS			
e) Technical testing and analysis services (CPC 8676)	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section		

Australia-EU model with Canadian examples

Example 2: Scheduling a 49% foreign equity cap, subject to standstill and ratchet

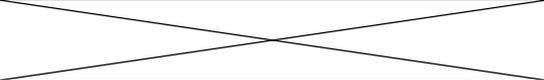
Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
I. HORIZONTAL COMMITMENTS			
<i>Party</i> undertakes its specific commitments in accordance with Part II of Agreement			
RESERVATIONS pursuant to Part II, <i>Article Y</i> [National Treatment, standstill and ratchet]		Pursuant to Part II, <i>Article Y</i> [National Treatment, standstill and ratchet], <i>Party</i> reserves the right to adopt or maintain any measure in the specific sectors, sub-sectors or activities listed below: -	
RESERVATIONS pursuant to Part II, <i>Article YY</i> [specific paragraph on horizontal NT]		<i>Party</i> maintains limitations on national treatment in all sectors for:	
ALL SECTORS INCLUDED IN PART II OF THIS SCHEDULE			
II. SECTOR-SPECIFIC COMMITMENTS			
b. Services incidental to mining (CPC 883)	1) None 2) None 3) None, other than: Foreign ownership restricted to 49% 4) Unbound, except as indicated in the horizontal section	3) Foreign ownership restricted to 49%	

Australia-EU model with Canadian examples

Example 3: Scheduling a 49% foreign equity cap, not subject to standstill and ratchet

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
I. HORIZONTAL COMMITMENTS			
<i>Party undertakes its specific commitments in accordance with Part II of Agreement</i>			
RESERVATIONS pursuant to Part II, <i>Article Y</i> [National Treatment, standstill and ratchet]		Pursuant to Part II, <i>Article Y</i> [National Treatment, standstill and ratchet], <i>Party</i> reserves the right to adopt or maintain any measure in the specific sectors, sub-sectors or activities listed below: - Services incidental to mining (CPC883), any measure that impose restrictions on foreign ownership, provided that restrictions allow for no less than 49% foreign ownership.	
RESERVATIONS pursuant to Part II, <i>Article YY</i> [<i>specific paragraph on horizontal NT</i>]		Party maintains limitations on national treatment in all sectors for:	
ALL SECTORS INCLUDED IN PART II OF THIS SCHEDULE			
II. SECTOR-SPECIFIC COMMITMENTS			
h. Services incidental to mining (CPC 883)	1) None 2) None 3) None, other than: Foreign ownership restricted to 49%		

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	4) Unbound, except as indicated in the horizontal section		
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<p>Example 4: Scheduling a sector with different scope of commitments for MA and NT</p>
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Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
I. HORIZONTAL COMMITMENTS			
<i>Party</i> undertakes its specific commitments in accordance with Part II of Agreement			
RESERVATIONS pursuant to Part II, <i>Article Y</i> [National Treatment, standstill and ratchet]		Pursuant to Part II, <i>Article Y</i> [National Treatment, standstill and ratchet], <i>Party</i> reserves the right to adopt or maintain any measure in the specific sectors, sub-sectors or activities listed below: -	
RESERVATIONS pursuant to Part II, <i>Article YY</i> [specific paragraph on horizontal NT]		<i>Party</i> maintains limitations on national treatment in all sectors for:	
ALL SECTORS INCLUDED IN PART II OF THIS SCHEDULE			
II. SECTOR-SPECIFIC COMMITMENTS			
CPC 851: R&D services on natural sciences	1) None for CPC 851 and 852. Unbound for CPC 852.	1) Residency requirement for CPC 852	
CPC 852: R&D services on social	2) None for CPC 851 and 852. Unbound for CPC 852.		

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sciences and humanities CPC 853: Interdisciplinary R&D services	3) None for CPC 851 and 852. Unbound for CPC 852. 4) Unbound, except as indicated in the horizontal section.		
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Example 5: Scheduling a measure that cuts across multiple sectors

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
I. HORIZONTAL COMMITMENTS			
<i>Party</i> undertakes its specific commitments in accordance with Part II of Agreement			
RESERVATIONS pursuant to Part II, <i>Article Y</i>		Pursuant to Part II, <i>Article Y</i> [National Treatment, standstill and ratchet], <i>Party</i> reserves the right to adopt or maintain any measure in the specific sectors, sub-sectors or activities listed below: -	
RESERVATIONS pursuant to Part II, <i>Article YY</i>		<i>Party</i> maintains limitations on national treatment in all sectors for: -	
ALL SECTORS INCLUDED IN PART II OF THIS SCHEDULE			
II. SECTOR-SPECIFIC COMMITMENTS			

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<p>Maritime Transport Services</p> <p>Customs clearance services (as defined)</p>	<p>1) None, other than: Licensed Customs Brokers (Juridical persons): Services must be supplied through a commercial presence. (Natural persons): Requirement for permanent residency.</p> <p>2) None, other than: Licensed Customs Brokers (Juridical persons): Services must be supplied through a commercial presence. (Natural persons): Requirement for permanent residency.</p> <p>3) None</p> <p>4) Unbound, except as indicated in the horizontal section, and: Licensed Customs Brokers (Natural persons): Requirement for permanent residency.</p>	<p>1) 2) 3) 4) Licensed Customs Brokers (Juridical persons): Services must be supplied through a commercial presence. (Natural persons): Requirement for permanent residency.</p>	
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Australia-EU model with Canadian examples

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
<p>H* <u>Services auxiliary to all modes of transport other than Maritime Transport Services</u></p> <p>a) Container handling services (CPC 7411)</p> <p>Other cargo handling services (CPC 7419)</p> <p>b) Storage and warehouse services (CPC 742)</p> <p>c) Freight transport agency services (CPC 748)</p> <p>d) Other supporting and auxiliary transport services, including freight forwarding (CPC 749)</p>	<p>1) None other than: Licensed Customs Brokers (Juridical persons): Services must be supplied through a commercial presence. (Natural persons): Requirement for permanent residency.</p> <p>2) None other than: Licensed Customs Brokers (Juridical persons): Services must be supplied through a commercial presence. (Natural persons): Requirement for permanent residency.</p> <p>3) None</p> <p>4) Unbound, except as indicated in the horizontal section, and: Licensed Customs Brokers (Natural persons): Requirement for permanent residency.</p>	<p>1) 2) 3) 4) Licensed Customs Brokers (Juridical persons): Services must be supplied through a commercial presence. (Natural persons): Requirement for permanent residency.</p>	

Australia-EU model with Canadian examples

Example 6: Maintaining full policy flexibility for a sector or activity
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Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
I. HORIZONTAL COMMITMENTS			
<i>Party undertakes its specific commitments in accordance with Part II of Agreement</i>			
RESERVATIONS pursuant to Part II, <i>Article Y</i>		Pursuant to Part II, <i>Article Y</i> [National Treatment, standstill and ratchet], <i>Party</i> reserves the right to adopt or maintain any measure in the specific sectors, sub-sectors or activities listed below: - Minority Affairs, any measure conferring rights or privileges to a socially or economically disadvantaged minority.	
RESERVATIONS pursuant to Part II, <i>Article YY</i>		<i>Party</i> maintains limitations on national treatment in all sectors for: -	
ALL SECTORS INCLUDED IN PART II OF THIS SCHEDULE			
II. SECTOR-SPECIFIC COMMITMENTS			

A paper submitted by Canada on 4 March 2013 regarding the Annex on Movement of Natural Persons (Mode 4) and elaborating in great details on Canada's paper of 30.11.2012.

In Canada's Mode 4 paper, dated November 30, 2012, elements of a work plan for Mode 4 were introduced. The following discussion questions are intended to build on these elements, in order to facilitate preparations for the March meeting on Mode 4, as well as for consideration by any participants who will be tabling proposals for Mode 4.

Two Annexes have been attached to the discussion questions, containing background material which may be useful. Annex A contains an overview of Mode 4 issues (temporary entry vs. presence of a natural person) and how they have been addressed in the current GATS obligations and commitments. Annex B contains an overview of Mode 4 categories from participants' current schedules and offers.

Temporary Entry vs. Presence of a Natural Person

- How should Mode 4 commitments for entry and presence be scheduled? Should commitments for entry be scheduled in the same manner as commitments for presence? (Refer to Annex A) To what extent should both entry and presence be subject to the market access and national treatment obligations?
- In a bilateral context, to what extent do participants schedule Mode 4 commitments (entry and presence) by sector, or as horizontal commitments? Outside of the GATS (e.g., bilateral free trade agreements), do participants separate commitments for entry and presence? What are the benefits of scheduling both together, compared to the benefits of addressing them independently?

Transparency of Commitments

- What is the best approach to ensure transparency of commitments? For example, under the GATS, if a Member schedules the category of ICTs, but is silent on the applicability of restrictions, it may be unclear whether or not that Member is reserving flexibility to apply restrictions such as ENTs or quotas. Do participants agree that the applicability (or non-applicability) of restrictions should be transparent? If so, what types of restrictions should be covered? (eg. ENTs, quotas and other numerical restrictions, education requirements, experience requirements, wage floors, etc.)

Types of Measures to be covered

- It will be important to clearly define the types of measures that will be covered by mode 4 commitments. While Turkey has proposed measures to address "business visas" not all members apply visas in the same manner, and in some cases work permits and their conditions are completely separate from the visa (which is applied for reasons such as security, etc.) Is there a way to create a clearer definition or distinction between the two issues (i.e., visas and work authorizations)? Are there other distinctions that need to be

made?

Common Categories of Business Persons

- Participants have noted the value in developing common definitions for key categories of business persons. Would participants support inclusion of common definitions of the five most commonly covered categories in the GATS (ie. Intra-company transferees, short term business visitors, business persons responsible for an establishment, contract service suppliers, and independent professionals)? Are there other categories that would benefit from a common definition for clarity and predictability? What would be the key elements to be included in each definition? (Refer to Annex B)

Standards for Ambition

- What common categories of business persons should form a core commitment under the agreement? It appears that ICTs would be a likely candidate, given that all participants have some degree of familiarity with this category and short term business visitors have a considerable value in enabling other modes of trade. Other categories, such as CSS and IP may be more sensitive for certain members and, outside the GATS, are often based on reciprocity. Should all categories be addressed in the same manner?

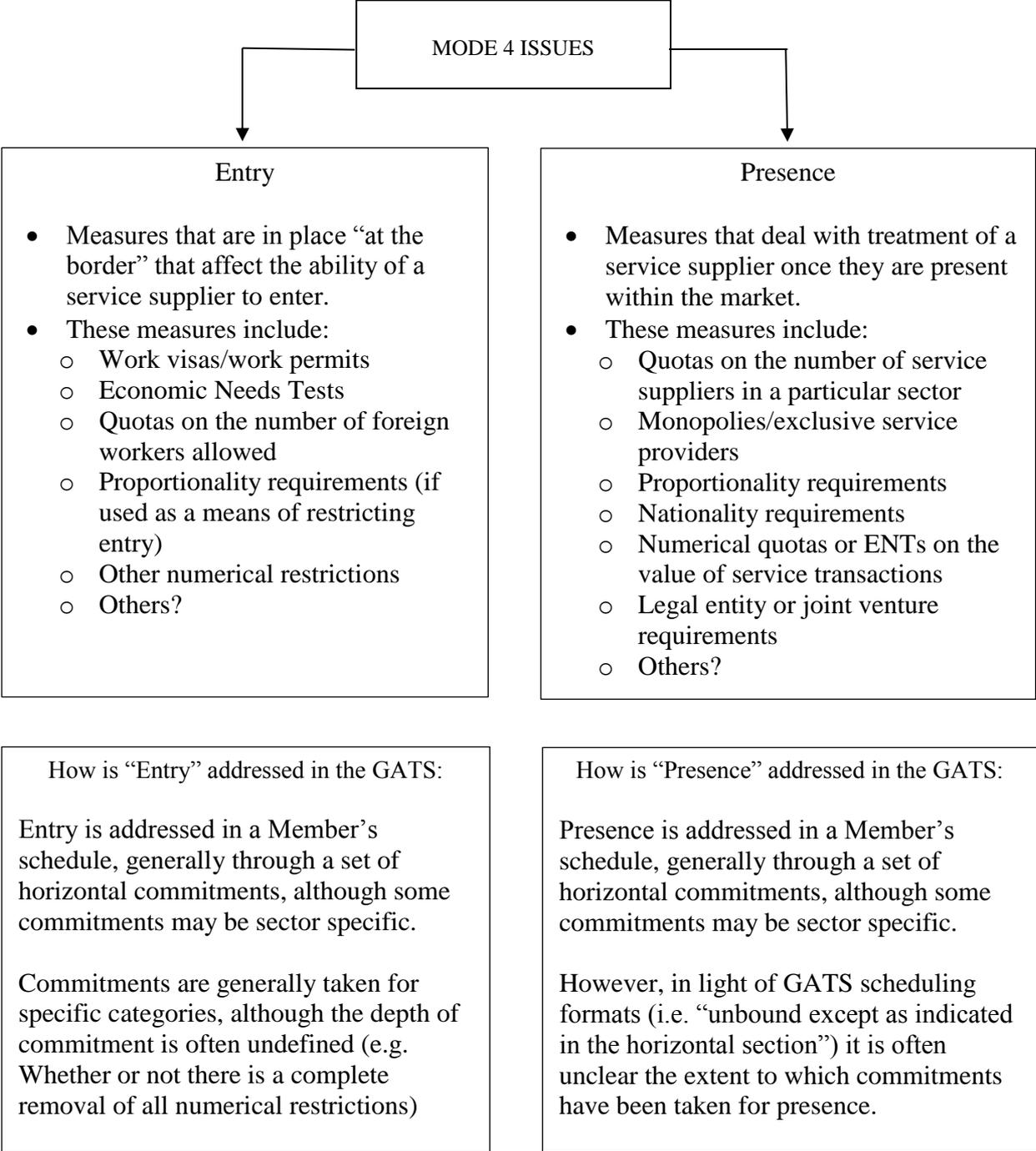
Building a Meaningful Chapter

- Under the GATS, Mode 4 obligations are addressed under the "Annex on Movement of Natural Persons Supplying Services Under the Agreement". To what extent should the text of the Annex be replicated in a plurilateral agreement? Are there any modifications that could improve the current text? For example, should the phrase "access to the employment market of a Member" be clarified?
- Switzerland, in its December 2012 proposal, has included obligations on transparency, contact points, and application procedures. Which other obligations would be beneficial to include under Mode 4 (e.g. additional transparency and information sharing issues, other types of obligations)?
- Are there any specific sensitivities that may need to be addressed in the text (e.g. potential abuses of the system such as fraud)? To what extent would these sensitivities need to be addressed in the text in order to facilitate maximum ambition?

Accessions

Although the issue of accessions will generally be addressed in the broader context, are there any sensitivities specific to Mode 4 that will need to be taken into consideration? What impacts could the accession process have on the overall level of ambition for Mode 4?

ANNEX A: TYPES OF MODE 4 ISSUES¹



¹ An additional element of Mode 4 deals with the Recognition of Qualification which is already being addressed in the broader negotiations (e.g. Australia's proposal on professionals)

ANNEX B: COVERED CATEGORIES IN THE GATS

The following compilation is meant to highlight elements of common mode 4 categories used in the GATS. This list is not exhaustive, and does not include the definitions used by participants in their bilateral FTAs.

Intra - Company Transferees

- All participants have offered some form of commitments for intra-company transferees.
- These commitments are an important enabler of Mode 3.
- Most common categories include executives, senior managers and specialists. The category of graduate trainees has also been included.
- Provides services to a branch, subsidiary or affiliate.
- Some instances of pre-employment requirements.
- Other limitations include proportionality tests, a test of “reasonableness” and requirement to train local nationals.
- Duration of stay ranges from 1-4 years, with most commitments for 3 years with often times the possibility to extend.

Short term business visitors

- A considerable majority of participants have offered some form of commitment for short term business visitors.
- These commitments are an important complement to trade in services, investment, trade in goods, and government procurement.
- Scope of activities – many participants have only scheduled service sellers, while others included activities such as meetings negotiations, activities associated with establishment, and after sales/lease (aka installers and maintainers).
- Remuneration comes from a source outside the host market.
- Not engaged in direct sales to the public.
- Duration of stay is generally 3 months, with some participants offering longer periods.

Business Persons Responsible for an Establishment

- Approximately ½ of the participants have offered some form of commitments for investors/entry for establishment purposes
- For some participants, this commitment falls under the short-term business visitor category, while for others it is a longer commitment.
- This commitment may cover pre-establishment, post-establishment or both.

CSS/IP

- Approximately ½ of participants have offered some form of commitments for contract service suppliers or independent professionals but definitions vary widely.
- Some commitments are broad, while others are linked to specific sectors.
- In FTAs, many participants have been able to undertake more ambitious commitments than in the GATS, but often the commitments are under a framework of strict reciprocity.

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

Framework for a Working Group on Mode 4
Discussion Paper submitted by Canada
November 30, 2012

In order to ensure an ambitious and meaningful outcome of a plurilateral agreement on services, negotiations on mode 4 will play an important role. This paper proposes a framework for a Working Group on mode 4 in the context of these negotiations. Mode 4, the movement of natural persons, is one of the four modes of service supply in the GATS and an important complement to trade in goods, trade in services by other modes, government procurement and investment.

Objectives

While each participant will have specific objectives in the negotiations, including in the area of mode 4, there are some horizontal objectives that could guide the Working Group. In particular, commitments on Mode 4 need to be:

- Clear and transparent: a well-defined scope of commitment and a clear meaning of the level of obligation bound by the commitment;
- Predictable: binding access, resulting in increased predictability and, in some cases, improved access, in areas that facilitate trade in services, trade in goods, and investment;
- Ambitious: a broad coverage for commitments that reflect current access, and, where possible, offer new market access on a preferential basis;
- Balanced: across a comprehensive agreement with ambition in all modes of supply;
- Mindful of sensitivities: While participants have agreed to an overall high level of ambition for the Agreement, any approach to mode 4 must provide sufficient flexibility to address participants' legitimate sensitivities.

Work Plan

Temporary Entry vs. Presence of a Natural Person

One important issue to be dealt with early in the negotiations on mode 4 will be the question of commitments for temporary entry vs. the commitments for presence of a natural person. The former captures "at the border" measures such as work permit requirements, while the latter captures treatment that is afforded to the business person once they are in the territory of the other Party. Both of these elements are captured under mode 4 in the GATS, however, many participants address them separately in their bilateral free trade agreements. The Working Group should discuss how to handle each.

Common Categories of Business Persons

One of the challenges under the GATS is the lack of common definitions for the categories of covered persons. In order to increase transparency and clarity of commitments, participants could develop a set of common definitions that could include categories such as intra-company transferees, business visitors, investors, contract service suppliers and independent professionals. Definitions should also include general conditions to be applied to a category (eg. Education requirements, length of stay, remuneration, etc.)

Building a Meaningful Chapter

Any text on mode 4 could establish general obligations such as transparency and information sharing, and exceptions such as in the event of domestic labour disputes. In addition, participants may wish to discuss specific sensitivities on mode 4 (eg. fraud), with a view to developing proposed text to address these concerns, allowing Members to undertake commitments that are more ambitious.

Transparency of Commitments

Participants will need to seek agreement on the types of measures that are to be covered in mode 4 commitments. For entry, this could include Economic Needs Tests, Proportionality Requirements, Quotas, etc. For presence, this could include limitations on national treatment, most-favoured nation, etc.

To further increase transparency and clarity, the working group will need to determine how commitments will be scheduled in order to clearly demonstrate their value. Often times, in current GATS commitments, it is unclear if numerical restrictions continue to apply to a committed sector. The Working Group should establish common scheduling guidelines that clearly describe the commitment.

Standards for Ambition

The Working Group could then discuss the level of commitments including any core elements. Some categories are generally less sensitive, such as intra-company transferee, and short-term business visitors. Others would be handled by bilateral negotiation. The Working Group could explore ways to top up commitments to maximize ambition while taking into account sensitivities.

Accessions

The Working Group should also look at specific needs for Mode 4 related to any accession process to the agreement.

A paper submitted to participants by Colombia in May 2012.

Colombia elaborates on the two different approaches proposed by participants, a positive listing vs a negative listing.

SERVICES PLURILATERAL INITIATIVE

Homework questions

POSSIBLE ARCHITECTURE OF AN AGREEMENT: POSITIVE AND NEGATIVE-LIST APPROACHES

Colombia's experience

1. During the last years Colombia has negotiated / is negotiating Free Trade Agreements (FTA's) that include provisions to regulate trade in services and investment.
2. The first negotiating option for Colombia is following a NAFTA approach, which covers services trade through different chapters: Cross-Border Trade in Services (modes 1, 2 and 4), Investment, Telecom, Financial Services (self-contained chapter) and Temporary Entry of Business Persons.
3. However, there have been cases in which GATS architecture has been used.
4. In the case of the EFTA-Colombia agreement, that group of countries proposed a GATS services chapter but there was one particularity as it had the option of choosing a positive or negative liberalization approach. At the end both parties chose the first one but it is important to highlight this precedent for RGF analysis, in case it would be relevant.
5. Colombia has reflected its current level of liberalization in both types of approaches. It has been a more complex task in the case of a positive lists scheme, especially regarding future measures and a transparency mechanism to identify the applicable legislation.
6. Colombia has identified some services sectors where there could be a need to introduce new regulations in the future, in order to meet national policy objectives. Those future measures could breach one or various obligations under the services chapter so Colombia has tried to reflect it under both approaches. Particularly, in the case of a positive list, for those sectors the alternative used has been taking unbound commitments. There is an example of a future measure for one of the sectors identified sectors and the way Colombia has reflected it under both liberalization approaches:

ANNEX II		POSITIVE LIST	
Sector	Research and development services	Sector or subsector	Research and development services
Obligations concerned	Market Access	Limitations on market access	
Description	<u>Cross-border Trade in Services</u> Colombia reserves the right to adopt or maintain any measure.	Modes 1 and 2	Unbound

7. Additionally, to cover broader sensitive areas (across-sectors) that require particular treatments, some "special notes" were included. These notes guarantee the government the possibility to implement measures that might affect the liberalization commitments, but only for very specific and limited reasons (similar to Annex II under a negative list approach). Maybe the archetypical example of such notes is the one aimed to protect the "economical disadvantaged minorities".
8. Unfortunately it has not been possible to design a clause that contains an inventory of current measures that support each commitment under a positive list approach. Alternatively it has been used a "review" provision, which aim is further liberalizing trade in services, and in doing so the task consists in reviewing the schedules of specific commitments periodically, to provide for a reduction or elimination of remaining discrimination between the parties.
9. It is also important to mention that even in the case of an annex II reservation, there is a need to consider the development of procedures to increase the transparency of those kind measures. It means that a country, according to annex II, can issue a measure in future which is against any of the obligations of the chapter provisions. However, there has not been developed a transparency mechanism to make that measure available to the other party.
10. A final remark has to be made in relation to the NMF clause. In the positive list approach agreements, there is always a very broad NMF exception that covers both Agreements notified under Article V of GATS and advantages conferred to adjacent countries that facilitate exchange to contiguous frontier zones. Nonetheless, a commitment to afford adequate opportunity to negotiate similar deeper commitments is included (when technically feasible).