

**Really Good Friends – Meeting 28 June 2012**  
**Agenda Item: International Services Agreement**

**Submission by Switzerland**

**Legal references in a Positive List Approach**

**Objective**

In a recent paper, the EU has proposed to members of RGF a method to undertake standstill and ratchet commitments on the basis of GATS-type Schedules and GATS-type Market Access (MA) and National Treatment (NT) obligations.

In the present paper, Switzerland, building on the proposal tabled by the EU, suggests some additional refinements of Schedules of Specific Commitments with a view to go one step further.

The thought behind the present paper is that standstill and ratchet commitments, by their very nature, rely in substance on national legal provisions. A standstill commitment means that the commitment reflects the existing law. A ratchet commitment means that any future liberalisation of that law is automatically bound under the Treaty.

Thus, it is attractive to invite Members to be more specific, in their schedules, about the underlying laws where standstill or ratchet commitments are undertaken.

In the following proposal, the aim is to develop a method that would have the least possible incidence on the present universally agreed format of positive lists. Therefore, the proposal below simply is to add a further (fifth) column in the standard GATS list, *i.e.* the format and nature of the existing columns would not change.

**Implementation**

Switzerland proposes that such additional fifth column in the Schedule of Specific Commitments be used by Members to inscribe the exact names and references of any legal or regulatory acts underlying their standstill or ratchet commitments.

For that purpose, a corresponding provision should be added in the main text of the Agreement, along with the two draft provisions on standstill and ratchet proposed by the EU. Such provision would read:

“Members undertaking commitments under paragraphs [Standstill] or [Ratchet] shall list in their Schedules of Specific Commitments the legal references of the underlying measures”

Since standstill and ratchet commitments, if foreseen for MA and NT, should equally be foreseen for MFN, a similar additional column shall be added in members' list of MFN exemptions.

### **Illustrative example**

Taking into consideration that laws normally refer to the whole sector or sub-sector and to avoid unnecessary duplication of legal references, the proposal is to make the entries for the legal references at the level of the sector, if it contains two levels (1., A.), or at the level of the sub-sector, if the sector contains three levels (1., A., (a)). The sub-sector to which the legal provision refers to is added in brackets if applicable. An illustrative example is provided in the Annex to this paper (this example only illustrates the fifth column. Columns MA and NT do not contain any changes in relation to standstill or ratchet).

The horizontal part of the Schedule would follow basically the same principle: reference to legal provisions would be made in the fifth column. However, they would be made for each entry instead of to sub-sectors. The list of MFN exemptions would also be extended with an additional column making reference to international treaties and national legislation on which basis each MFN exemption have been taken.

**Annex - Example for scheduling with legal references for standstill or ratchet commitments**

<b>Sector or Sub-sector</b>	<b>Limitations on Market Access</b>	<b>Limitations on National Treatment</b>	<b>Additional Commitments</b>	<b>Legal Reference of Scheduled Standstill or Ratchet Commitments</b>
<p>1. BUSINESS SERVICES</p> <p>E. <u>Rental/Leasing without Operators</u></p> <p>(a) Relating to ships</p> <p>- For maritime transport services (part of CPC 83103)</p>	<p>1) Unbound</p> <p>2) None</p> <p>3) In order to sail under Swiss flag, vessels must be 100 per cent owned and controlled by Swiss nationals, 3/4 of which having residency in Switzerland</p> <p>4) Unbound except as indicated in Part I</p>	<p>1) Unbound</p> <p>2) None</p> <p>3) Board of directors and management of companies owning ships sailing under Swiss flag must be composed of Swiss nationals, the majority of which having residency in Switzerland</p> <p>4) Unbound except as indicated in Part I</p>		<p><u>Legal basis in sub-sector E:</u></p> <p>Federal Law on maritime transport under Swiss flag (SR 747.30), Articles 19, 20, 21, 22, 23, 24, 91, 125 and 126 (sub-sector (a))</p> <p>Federal Ordinance on maritime transport (SR 747.301), Articles 5, 5a, 5b, 5c, 5d, 5e, 5f and 6 (sub-sector (a))</p> <p>Federal Ordinance on Swiss maritime yachts (SR 747.321.7), Articles 17 and 18 (sub-sector (a))</p>

<p>- For internal waterways transport on the Rhine (part of CPC 83103)</p>	<p>1) Unbound 2) None 3) In order to sail under Swiss flag, vessels must be owned by a company which is substantially influenced (66 per cent of capital and vote) by persons domiciled in Switzerland or in a country according to the Mannheim Convention and the protocols related to it 4) Unbound except as indicated in Part I; commercial presence in Switzerland required</p>	<p>1) Unbound 2) None 3) Traffic rights including cabotage are limited on the basis of the Mannheim Convention and the protocols related to it; owner of vessels must dispose of an appropriate managing agency in Switzerland 4) Unbound except as indicated in Part I; traffic rights including cabotage are limited on the basis of the Mannheim Convention and the protocols related to it; commercial presence in Switzerland required</p>		<p>Federal Law on ship registry (SR 747.11), Article 4 (sub-sector (a)) Federal Ordinance on ship registry (SR 747.111), Articles 8, 9, 10, 11, 12, 13, 14 and 15 (sub-sector (a)) Revised Act on Rhine shipping of 17 October 1868 between Baden, Bavaria, France, Hessen, Netherlands and Prussia (SR 0.747.224.101), as may be amended in the future, Articles 2 and 4 (sub-sector (a))</p>
<p>(b) Relating to aircraft - Relating to aircraft, excluding rental/leasing to companies flying on regular schedule or on charter (part of CPC 83104)</p>	<p>1) None 2) None 3) None 4) Unbound except as indicated in Part I</p>	<p>1) None 2) None 3) None 4) Unbound except as indicated in Part I</p>		
<p>(c) Relating to other transport equipment (CPC 83101 + 83102 + 83105)</p>	<p>1) None 2) None 3) None 4) Unbound except as indicated in Part I</p>	<p>1) None 2) None 3) None 4) Unbound except as indicated in Part I</p>		

(d) Relating to other machinery and equipment (CPC 83106 - 83109)	1) None 2) None 3) None 4) Unbound except as indicated in Part I	1) None 2) None 3) None 4) Unbound except as indicated in Part I		
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