

Really Good Friends – Meeting of 5 November 2012

Plurilateral Initiative on Trade in Services

Submission by Switzerland:

Possible operationalization of a hybrid schedule

Introduction

As stated in earlier discussions in the group of Really Good Friends, Switzerland is bound to many free trade partners with agreements covering trade in services. Some of those use a GATS-conform list of commitments while some others use a negative list.

In the discussion on a future international agreement on trade in services the choice of the listing technique was raised. Though Switzerland is equipped and experienced to negotiate under different methods of listing, its view is that in the plurilateral discussion this question cannot be disconnected from the shared objective to multilateralize the agreement at a later stage.

In recent meetings, some RGF members suggested to schedule commitments according to the common GATS layout in respect of Market Access (MA) while, regarding National Treatment (NT) a horizontal provision would be used which aims at a “hybrid approach”. In addition to such novel approach, the concepts of *standstill* and so-called *ratchet* were put forward.

Article XX of the GATS is flexible enough to accommodate hybrid scheduling techniques, considering in particular the formulation used in Article XX:1: “*each Schedule shall specify:*

- (a) *terms, limitations and conditions on market access;*
- (b) *conditions and qualifications on national treatment;”*

Arguably, a variety of possible hybrid techniques could be developed in line with such wording. And as a matter of fact virtually all GATS Members have scheduled their horizontal commitments on mode 1, 2 and 3 in a negative manner. It is furthermore recognized that listing does not *per se* influence the content or the quality of the obligations a particular country would be willing to undertake; under whichever listing technique in a negotiation a country takes the level of commitments it wants, whether far-reaching or not.

Objective

The present proposal by Switzerland presents one possible technique of “hybridation” which:

- Is compatible with Article XX of the GATS;
- Contains a horizontal provision for NT;
- Integrates positive and negative types of commitments;
- Integrates the concepts of standstill and ratchet, while using a flexible technique mindful that the positions of friends are sometimes difficult to reconcile;
- Attempts to set out in the horizontal provision elements for an effective operationalization of standstill and ratchet.

At the same time further explanations are awaited from the proponents of standstill and ratchet mechanisms as to their legal implication and practical functioning.

The question of splitting MA and NT

The RGF members exchanged opinions as to how much the techniques for committing MA and NT should or could diverge, respectively could be treated separate from one another. The critical question in that context is to determine how much, *in concreto*, *i.e.* when considering a given measure, or a given legal provision of legal act, MA aspects and NT aspect can be segregated. In some cases, a legal provision is clearly and uniquely affecting MA, but in other cases it may affect clearly both MA and NT, and sometimes it may be difficult to classify in a clear-cut manner. To deal with the latter situations, Article XX:2 of the GATS proposes the following solution: “*Measures inconsistent with both Articles XVI and XVII shall be inscribed in the column relating to Article XVI. In this case the inscription will be considered to provide a condition or qualification to Article XVII as well.*” In the same spirit, in negative lists the “measure elements” would mention both MA and NT” and the “description element” would reproduce the applied regulation without necessarily attempting to segregate precisely the MA aspect and the NT aspect. Many such situations may occur, for example and by far not exhaustively:

- “investment screening schemes” or “prior approval”: these are definitely NT limitation as they apply to foreigners only. However they also have a MA aspect, and in practice GATS Members scheduled them either in the MA or in the NT column;
- Joint-venture requirement mentioned in para (e) of GATS Article XVI apply only to foreigners and not to nationals and are thus also NT limitations;
- Capital participation limitations are also MA measures with NT aspect;

- The prohibition of branching from abroad are always scheduled in the MA column but embody formally a discriminatory element (they target specifically foreign businesses);
- All discriminatory Economic Needs Tests are both MA and NT measures;
- Limitation to the number of employees, or of foreign employees by foreign commercial presences are both quantitative and discriminatory restrictions;
- Quantitative quotas of entry of foreign natural persons under Mode 4 are scheduled in the MA column and are at the same time NT measures, given that they affect specifically foreigners;
- Arguably, any MA limitations under Mode 4 are by their sheer nature also NT limitation, as they target only foreigners;
- Often, horizontal policies to support disadvantaged local populations would have both MA and NT aspects, *e.g.* if a determined share of business, or a quantity of real estate, is reserved to indigenous people, to minorities or to other specific classes.

Such cases do not *per se* create a challenge since, through appropriate scheduling technique and conventions, ways are found to make sure that the legal commitment undertaken by a party is clearly identifiable, as done in GATS Article XX:2. However, in the absence of appropriate techniques and conventions it becomes a challenge to interpret commitments undertaken. That would be very much so if MA commitments and NT commitments were listed in two separate documents. The problem reaches an even higher dimension if a standstill and/or ratchet obligation is added, resulting in possible situation where, inadvertently, the same legal provision would be ratcheted or not according to the angle (MA or NT) from which the measure(s) it sets out is considered.

A case in point is that of the horizontal commitments, given their universal application across all services sectors. It is hard to see why the restrictive provisions of, say, the investment law, or the company law, or the immigration law, would be inscribed in distinct documents with different listing conventions. Therefore, it is advisable that the horizontal part of any lists retains a sufficient degree of homogeneity for both; and as already said, in GATS practice horizontal parts are already now almost entirely of negative nature. A close examination of existing lists shows that the manner in which horizontal restrictions are transposed from the law into the list not only is very much determined by the structure and concepts of the former, but would keep a parallelism for both MA and NT.

Approaching MA and NT separate from each other does not only raise the issues above. Another issue arises when a legal norm amounts to exclude a segment of a services sector from FTA obligations. An example could be that of trade in arms as a segment of the Distribution Services Sector. Under the GATS schedule, Members would "excluding arms, ammunition and explosives" in the left column of their commitment, and this exclusion

automatically and equally applies to MA and NT. Under a negative list, the party would take a reservation to the same effect but based on a non-conforming measure describing the scope of the Arms Law, capture equally MA and NT. If a new scheduling approach would separate MA and NT, that same exclusion would need to be repeated twice and using different concepts and techniques, which is not ideal. The difficulty is compounded if, as already mentioned above, a standstill and / or ratchet obligation only applies to one aspect of the measure (NT) but not the other (MA); concretely if later the material scope of the law is reduced, which would ratchet the scope of the NT reservation while the MA obligations would still exclude the initial segment of the arms trade sector.

For those reasons, the illustrative schedule attached, though using differentiated techniques for MA and NT commitments, maintains them near to each other by using one list only. Doing otherwise would undermine legal security and even make the outcome of legal dispute quite unpredictable.

Operationalization of standstill and ratchet

Switzerland has no experience in respect of standstill and ratchet in its services agreements, as it is assumed that there are better ways and means to serve our export interests, in particular in a long-term perspective. In spite of this lack of practical experience a consideration of the proposed concepts *in abstracto* has permitted to identify essential tools to improve their operationalization.

In respect of standstill, the difficulty is that applying the concept alone without additional tools leaves it impossible to gather a complete and precise recollection of the concessions obtained from the partner. With time passing, the problem can only worsen since the memory of what the conditions of entry had been at a given point in time rapidly diminishes. Domestic service suppliers often enquire what are their rights under our FTA, and clear and concrete answers must be delivered.

One way to improve that is to have a detailed description of the limitations in the lists, but this is a matter of request/offer negotiation rather than of Horizontal Provision. As an additional tool the Provision proposed by Switzerland obliges members to exchange the complete set of relevant legal acts as applicable at the standstill date. In addition to making the standstill really operational, it would improve transparency and ease the good faith interpretation of the commitments when time moves on.

In respect of the ratchet the major difficulty is that even though it is clear that its purpose and effect is that rights and obligations are changing over time in a dynamic manner, there does not seem to be a tool for either part to know if, when and to what extent changes have occurred. One way to attenuate partly this difficulty is, as proposed in the Horizontal Provision below, to add a legally binding obligation to notify any changes in the legal acts

relating to a ratchet commitment, plus an opportunity for parties to seek guidance as to whether such amendment also means a modification of rights and obligations under the FTA.

Draft Horizontal Provision for NT

The objectives of the present paper were listed earlier. As part of those objectives, the draft Horizontal Provision below is to define hybridation and to introduce new concepts of standstill and ratchet. MA and NT are no longer approached in the same manner, but all efforts were made to maintain them as close and parallel as possible. The Horizontal Provision has to be taken as a complement to Article XX of the GATS, and not have the effect of an indirect amendment of it. The proposed provision shall be examined in connection with the illustrative schedule attached.

(quote)

In the NT column "conditions and qualifications" to National Treatment are inscribed only to the extent that full National Treatment is not granted. The absence of an inscription amounts to a "none". Sectoral commitments on Mode 4 are as provided for in Part I.

The symbols S, SS, SR or SSRR may be inscribed in that column:

- the symbol S indicates that, in respect of Article XVII, the treatment bound horizontally or in the corresponding sector or subsector is that of the measures in force as on [1 January ****];
- the symbol SS indicates the same as S in respect of Articles XVI and XVII and thus also applies in the MA column;
- the symbol SR indicates that, in respect of Article XVII, the treatment bound horizontally or in the corresponding sector or subsector is that of the measures in force as on [1 January ****] or any subsequent amendment of those measures to the extent that the amendment improves the level of conformity, as it existed immediately before the amendments, with article XVII; a discontinuation or non renewal of the measures is *ipso jure* seen as an improvement and will be bound;
- the symbol SSRR indicates the same as SR in respect of Articles XVI and XVII and thus also applies in the MA column.

(unquote)

Illustrative schedule

Modes of supply: presence			
(1) Cross-border supply (4) Presence of natural persons		(2) Consumption abroad	(3) Commercial
Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Legal citation
<p>- CPC numbers indicated in parenthesis are references to the UN Provisional Central Product Classification (Statistical Papers, Series M, n° 77, Provisional Central Product Classification, Department of International Economics and Social Affairs, Statistical Office of the United Nations, New York, 1991).</p>			
<p>In the NT column "conditions and qualifications" to National Treatment are inscribed only to the extent that full National Treatment is not granted. The absence of an inscription amounts to a "none". Sectoral commitments on Mode 4 are as indicated in Part I.</p> <p>The symbols S, SS, SR or SSRR may be inscribed in that column:</p> <ul style="list-style-type: none"> - the symbol S indicates that, in respect of Article XVII, the treatment bound horizontally or in the corresponding sector or subsector is that of the measures in force as on [1 January ****]; - the symbol SS indicates the same as S in respect of Articles XVI and XVII and thus also applies in the MA column; - the symbol SR indicates that, in respect of Article XVII, the treatment bound horizontally or in the corresponding sector or subsector is that of the measures in force as on [1 January ****] or any subsequent amendment of those measures to the extent that the amendment improves the level of conformity, as it existed immediately before the amendments, with article XVII; a discontinuation or non renewal of the measures is <i>ipso jure</i> seen as an improvement and will be bound; - the symbol SSRR indicates the same as SR in respect of Articles XVI and XVII and thus also applies in the MA column. 			
PART I. HORIZONTAL COMMITMENTS			
ALL SECTORS INCLUDED IN THIS SCHEDULE			

Modes of supply: presence		(1) Cross-border supply (4) Presence of natural persons	(2) Consumption abroad	(3) Commercial
Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Legal citation	
Investment	(3) None except that, unless otherwise provided for in Part II, commercial presence shall only be through incorporation, joint venture or representative office.	Foreign investments above a threshold to be fixed annually (at present: 2 million Duro) are subject to prior approval by the Supreme Screening Council of the Nation, based on the national interest. In case of appeal its decisions may be reviewed by the President. SR.	National Decree on Foreign investment n° 3/1924 of 3.6.1924	
Acquisition of land		Only nationals and permanent resident are allowed to acquire agricultural land and forests. S.	Law on the preservation of productive natural resources n° 1/2000 of 1.1.2000	

Modes of supply: presence		(1) Cross-border supply (4) Presence of natural persons	(2) Consumption abroad	(3) Commercial
Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Legal citation	
Movement of natural persons	<p>(4) The entry and temporary stay of a foreign service supplier in the territory of the nation is allowed for the following categories:</p> <p>I. <u>Contractual Service Suppliers</u>: only for the purpose of fulfilling the service contract with a consumer on the territory of the nation and for the period set in the contract but not exceeding six months per calendar year;</p> <p>II. <u>Intra-Corporate Transferees (executives, managers and specialists)</u>: to take a position in a branch, subsidiary or affiliate in the territory of the nation of a foreign company, and for a period of stay of six years;</p> <p>III. <u>Installers and Maintainers</u>: to install or maintain industrial machinery or equipment, according to the terms of the sales contract of the machine and for up to six months;</p>	SSRR.	Immigration law n° 284/2010 of 23.4.2010	

Modes of supply: presence		(1) Cross-border supply (4) Presence of natural persons	(2) Consumption abroad	(3) Commercial
Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Legal citation	
PART II. SECTOR-SPECIFIC COMMITMENTS				
1. BUSINESS SERVICES				
A. <u>Professional Services</u>				
(a) Legal services - excluding representation to court and except notary public (part of CPC 861)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.	To supply advisory services on national law a foreign law firm or legal adviser needs to be associated with a local legal service provider.	Directive of the national association of lawyers of 3.4.1950	
(b) Accounting, auditing and bookkeeping services				
- Accounting and bookkeeping (CPC 862 except CPC 86211)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.	The chief accountant of companies incorporated in the central registry must be a national or a permanent resident. SR.	Regulation on tax procedures, n° 8736 of 4.9.1989	
- Auditing services (CPC 86211)	(1) Unbound for fiscal audit. (2) Unbound for fiscal audit. (3) None. (4) Unbound, except as indicated in Part I.	The audit report of companies incorporated in the central registry must be signed by a national or a permanent resident. SR.	Regulation on tax procedures, n° 8736 of 4.9.1989	

Modes of supply: presence		(1) Cross-border supply (4) Presence of natural persons	(2) Consumption abroad	(3) Commercial
Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Legal citation	
(c) Taxation services (CPC 863)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.			
(d) Architectural services (CPC 8671)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.			
(e) Engineering services (CPC 8672)	(1) None. (2) None. (3) None, except Economic Needs Test regarding Sworn Surveyors' services for official purposes, based on volume of demand. (4) Unbound, except as indicated in Part I.	Sworn Surveyors for official measurements must be registered in the Central Registry and must have five years local practice under the supervision of a registered surveyor. SSRR.	Ordinance on measurements for official purposes n° 126/1955 of 23.5.1955	
(f) Integrated engineering services (CPC 8673)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.			

Modes of supply: presence	(1) Cross-border supply (4) Presence of natural persons	(2) Consumption abroad	(3) Commercial
Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Legal citation
(g) Urban planning and landscape architecture services (CPC 8674)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.		
(h) Medical and dental services (CPC 9312)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.	Foreign doctors must obtain the approval of the National Association of Doctors before opening a practice.	Statutes of the National Association of Doctors, 1.1.1944
(i) Veterinary services (CPC 932)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.		
(j) Private services provided by midwives, nurses, physiotherapis ts and para- medical personnel (part of CPC 93191)	(1) Unbound. (2) None. (3) None. (4) Unbound, except as indicated in Part I.		

Modes of supply: presence		(1) Cross-border supply (4) Presence of natural persons	(2) Consumption abroad	(3) Commercial
Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Legal citation	
B. <u>Computer and Related Services</u>				
Computer and related services (CPC 84)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.			
C. <u>Research and Development Services</u>				
(a) R&D services on natural sciences (CPC 851)	(1) None. (2) None. (3) Project involving collection of biodiversity are subject to prior approval. (4) Unbound, except as indicated in Part I.	Foreign financed and run project must employ at least 20% of national or permanent resident scientists. SR	MA: Law on biodiversity 153/2007 of 10.2.2007 NT: Law on Research 452/2002 of 12.3.2002	
(b) R&D services on social sciences and humanities (CPC 852)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.			
(c) Interdiscipl inary R&D services (CPC 853)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.			

Modes of supply: presence		(1) Cross-border supply (4) Presence of natural persons	(2) Consumption abroad	(3) Commercial
Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Legal citation	
D. <u>Real Estate Services</u>				
(a) Real estate services involving own or leased property - excluding agricultural land and forests (part of CPC 821)	(1) Unbound. (2) None. (3) None. (4) Unbound, except as indicated in Part I.		Law on the preservation of productive natural resources n° 1/2000 of 1.1.2000	
(b) Real estate services on a fee or contract basis (CPC 822)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.			

Modes of supply: presence		(1) Cross-border supply (4) Presence of natural persons	(2) Consumption abroad	(3) Commercial
Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Legal citation	
E. <u>Rental/Leasing Services without Operators</u>				
(a) Relating to ships (CPC 83103)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.	National Treatment is not bound in respect to rental and leasing of maritime ships.	First Maritime Act, 23.12.1902 Ordinance of implementation of the First Maritime Act, 13.4.1912 Ministerial Decree on Protection of the Sea against Foreign Threats of 3.2.1939	
(b) Relating to aircraft - Relating to aircraft, excluding rental/leasing to companies flying on regular schedule or on charter (part of CPC 83104)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.		Law on civil aviation n° 512/1974 of 15.6.1974	
(c) Relating to other transport equipment (CPC 83101 + 83102 + 83105)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.	National Treatment is not bound in respect to rental and leasing of interstellar ships with more than 50% of their spare parts manufactured abroad. SR.	Presidential decree on freedom and control over the interstellar routes n° 283/2012 of 5.11.2012	

Modes of supply: presence		(1) Cross-border supply (4) Presence of natural persons	(2) Consumption abroad	(3) Commercial
Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Legal citation	
(d) Relating to other machinery and equipment (CPC 83106-83109)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.			
(e) Other - Leasing or rental services concerning personal and household goods, excluding goods embodying any type of sexual or violent content (part of CPC 832)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.			
F. <u>Other Business Services</u>				
(a) Advertising services (CPC 871)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.	Aerial advertising is allowed only upon approval by the Sky Traffic Register; To be approved, foreign owned companies are subject to special monthly inspection. SR	Operational Rules of the Central Command of the Sky Traffic Register (ORCCSTR), 5.3.1963.	

Modes of supply: presence	(1) Cross-border supply (4) Presence of natural persons	(2) Consumption abroad	(3) Commercial
Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Legal citation
(b) Market research and public opinion polling services (CPC 864)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.		
(c) Management consulting services (CPC 865)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.		
(d) Services related to management consulting (CPC 866)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.		
(e) Technical testing and analysis services, including ships survey services (CPC 8676)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.		

Modes of supply: presence	(1) Cross-border supply (4) Presence of natural persons	(2) Consumption abroad	(3) Commercial
Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Legal citation
(f) Services incidental to agriculture, hunting and forestry (except fire-fighting, timber evaluation, forest management) (part of CPC 881)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.		Law on the preservation of productive natural resources n° 1/2000 of 1.1.2000
(g) Services incidental to fishing (CPC 882)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.		
(h) Services incidental to mining (CPC 883 + 5115)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.		
(i) Services incidental to manufacturing (part of CPC 884 + part of CPC 885)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.		

Modes of supply: presence	(1) Cross-border supply (4) Presence of natural persons	(2) Consumption abroad	(3) Commercial
Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Legal citation
(j) Services incidental to energy distribution (CPC 887)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.		
(k) Placement and supply services of personnel (CPC 872)	(1) Unbound. (2) Unbound. (3) None. (4) Unbound, except as indicated in Part I.	Branches, subsidiaries and affiliates of foreign placement companies are not allowed to actively seek to place or introduce into the domestic labor market natural persons on behalf of parts of the company located abroad. SR.	Regulation n° 39 to Labour Law n° 88/1995 of 8.8.1995 Guidelines of the Labor market directorate regarding intra company labor movements, 23.5.1999
(l) Investigation and security limited to consulting (CPC 87302)	(1) Unbound. (2) None. (3) None. (4) Unbound, except as indicated in Part I.		Law establishing the nationwide police system, n° 12/1960 of 2.3.1960
(m) Related scientific and technical consulting services (CPC 8675)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.		

Modes of supply: presence		(1) Cross-border supply (4) Presence of natural persons	(2) Consumption abroad	(3) Commercial
Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Legal citation	
(n) Maintenance and repair of equipment (not including maritime vessels, aircraft or other transportation equipment) (CPC 633 + 8861-8866)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.			
(o) Building-cleaning services (CPC 874)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.			
(p) Photographic services (except for aerial photography) (CPC 875)	(1) None (2) None. (3) None. (4) Unbound, except as indicated in Part I.		Law on civil aviation n° 512/1974 of 15.6.1974	
(q) Packaging services (CPC 876)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.			

Modes of supply: presence	(1) Cross-border supply (4) Presence of natural persons	(2) Consumption abroad	(3) Commercial
Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Legal citation
(r) Printing, publishing (CPC 88442)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.		
(s) Convention services (part of CPC 87909)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.		
(t) Other - Translation and interpretation services (CPC 87905)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.	Translation and interpretation services for tribunals and courts are permitted only to persons residing in the territory of the nation.	Regulation establishing the procedures of judicial processes,
- Other (CPC 879 except 87905) excluding: auctioneering services; debt collection services; precious metal pouncing services;	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.		
2. COMMUNICATION SERVICES			

Modes of supply: presence		(1) Cross-border supply (4) Presence of natural persons	(2) Consumption abroad	(3) Commercial
Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Legal citation	
C. Telecommunications Services				
<u>Basic Telecommunications Services</u>				
Basic telecommunications services (Part of CPC 7521, 7522, 7523, 7526, 7529)	(1) None. (2) None. (3) None except that Basic telecommunication services in rural areas may be reserved to local rural telecommunication operators. Branching is allowed. (4) Unbound, except as indicated in Part I.	Foreign providers may provide international basic communications services only through the major national operator.	Telecommunication law n° 12/1980 of 3.1.1980 Telecommunication Act n° 6387/2006 of 18.12.2006 Interprovincial convention on rural telecommunication of 19.6.1997	
<u>Value-added Telecommunications Services</u>				
Value-added telecommunications services (Part of CPC 7521, 7522, 7523, 7526, 7529)	(1) None. (2) None. (3) None. Branching is allowed. (4) Unbound, except as indicated in Part I.			

Modes of supply: presence		(1) Cross-border supply (4) Presence of natural persons	(2) Consumption abroad	(3) Commercial
Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Legal citation	
3. CONSTRUCTION AND RELATED ENGINEERING SERVICES				
A. <u>General Construction Work for Buildings</u> (CPC 512)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.			
B. <u>Construction Work for Civil Engineering</u> (CPC 513)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.			
C. <u>Installation and Assembly Work</u> (CPC 514 + 516)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.			
D. <u>Building Completion and Finishing Work</u> (CPC 517)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.			

Modes of supply: presence		(1) Cross-border supply (4) Presence of natural persons	(2) Consumption abroad	(3) Commercial
Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Legal citation	
E. <u>Other</u>	(1) None.			
- Pre-erection work at construction sites (CPC 511)	(2) None.			
	(3) None.			
	(4) Unbound, except as indicated in Part I.			
- Special construction work (CPC 515)				
- Renting services related to equipment for construction or demolition of buildings or civil engineering works, with operator (CPC 518)	(1) None.			
	(2) None.			
	(3) None.			
	(4) Unbound, except as indicated in Part I.			

Modes of supply: presence		(1) Cross-border supply (4) Presence of natural persons	(2) Consumption abroad	(3) Commercial
Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Legal citation	
4. DISTRIBUTION SERVICES				
A. <u>Commission Agents' Services</u> Excluding services related to commodities (Part of CPC 621)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.		Central Bank Circular on commodities markets of 19.12.2010	
B. <u>Wholesale Trade Services</u> except pharmaceutical products, medical appliances, arms, ammunition and explosives (Part of CPC 622 except CPC 62262)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.			

Modes of supply: presence		(1) Cross-border supply (4) Presence of natural persons	(2) Consumption abroad	(3) Commercial
Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Legal citation	
C. <u>Retailing Services</u> except pharmaceutical products, medical appliances, arms, ammunition and explosives (Part of CPC 631 + 632 + 6111 + 6113 + 6121 + 613)	(1) None. (2) None. (3) None except that: - each foreign retail chain cannot have more than 20 shops (does not apply to single-brand retail services). - shops of more than 5'000 m2 in city centers are subject to approval, including Economic needs Test and Impact assessment on small retail business (4) Unbound, except as indicated in Part I.	SSRR.	Regulation on promotion of SMEs n° 39/2001 of 8.1.2001	
D. <u>Franchising</u> (CPC 8929)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.			

Modes of supply: presence		(1) Cross-border supply (4) Presence of natural persons	(2) Consumption abroad	(3) Commercial
Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Legal citation	
5. EDUCATIONAL SERVICES				
Limited to education services wholly finance by the private sector.				
A. <u>Primary Education Services</u> (CPC 921)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.	One member of the board of directors must be national or permanent resident	Private primary schools regulation n° 1/1950 of 1.1.1950	
B. <u>Secondary Education Services</u> (CPC 922)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.			
C. <u>Higher Education Services</u> (CPC 923)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.			
D. <u>Adult Education Services</u> (CPC 924)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.			

Modes of supply: presence		(1) Cross-border supply (4) Presence of natural persons	(2) Consumption abroad	(3) Commercial
Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Legal citation	
E. <u>Other Education Services</u> Except shooting instruction and flying schools (Part of CPC 929)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.			
6. ENVIRONMENTAL SERVICES				
A. <u>Sewage Services</u> (CPC 9401)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.			
B. <u>Refuse Disposal Services</u> (CPC 9402)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.			

Modes of supply: presence		(1) Cross-border supply (4) Presence of natural persons	(2) Consumption abroad	(3) Commercial
Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Legal citation	
C. <u>Sanitation and Similar Services</u> (CPC 9403)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.			
D. <u>Other</u> - Cleaning services of exhaust gases (CPC 9404)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.			
- Noise abatement services (CPC 9405)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.			
- Nature and landscape protection services (CPC 9406)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.			

Modes of supply: presence		(1) Cross-border supply (4) Presence of natural persons	(2) Consumption abroad	(3) Commercial
Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Legal citation	
- Other environmental protection services except radioactivity cleanup and monitoring (Part of CPC 9409)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.		Law on national radioprotection n° 34/1964 of 4.3.1964	
7. FINANCIAL SERVICES				
<u>Insurance Services and Insurance-related Services</u>				

Modes of supply: presence		(1) Cross-border supply (4) Presence of natural persons	(2) Consumption abroad	(3) Commercial
Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Legal citation	
(i) Direct insurance	Foreign insurance companies may provide insurance services via branches.	Foreign insurer in the business of life insurance must have additional operational reserves of 200 million Duro.	Insurance Law n° 56/1999 of 5.4.1999	
(ii) Reinsurance and retrocession	(1) Unbound, except none for:	SR.	Circular of the Insurance Authority on reinsurance of 4.9.2004	
(iv) Services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services	- insurance of risks relating to maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods and any liability arising therefrom;		Circular of the Insurance Authority on foreign branching of 15.6.2008	
(iii) Insurance intermediation, such as brokerage and agency	- reinsurance; - services auxiliary to insurance;			
	(2) None.			
	(3) None.			
	(4) Unbound except as indicated in Part I.			

Modes of supply: presence		(1) Cross-border supply (4) Presence of natural persons	(2) Consumption abroad	(3) Commercial
Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Legal citation	
<u>Banking and Other Financial Services</u> (excluding insurance)				
Banking and other financial services	(1) Unbound, except for Asset management, securities services, transfer of information and advisory services. (2) None. (3) None. (4) Unbound, except as indicated in Part I.	Unbound for Mode 1, except that cross-border supply of asset management and securities services are allowed only if provided through a local broker-dealer. Foreign banks must have at least 10% of their balance sheets consisting of basic financial services in rural areas (savings account and small credit). SSRR.	Circular on promotion of local broker-dealers of 4.6.1919 Circular on promotion of basic financial services in rural areas of 6.4.1920	
8. HEALTH RELATED AND SOCIAL SERVICES				
A. <u>Hospital Services</u> (CPC 9311)	(1) Unbound. (2) None. (3) None. (4) Unbound, except as indicated in Part I.			
B. <u>Other Human Health Services</u> (CPC 9319 except 93191)	(1) Unbound. (2) None. (3) None. (4) Unbound, except as indicated in Part I.			

Modes of supply: presence	(1) Cross-border supply (4) Presence of natural persons	(2) Consumption abroad	(3) Commercial
Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Legal citation
C. <u>Social Services</u> (part of CPC 933)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.		
9. TOURISM AND TRAVEL RELATED SERVICES			
A. <u>Hotels and Restaurants</u> (including catering) Only hotels of more than 100 beds or located in areas of National Tourism Interest (CPC 641-643)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.	Hotels of more than 100 beds must employ at least 50% of nationals or permanent residents	Regulation on promotion of investment in the tourism sector n° 49/1784 of 2.5.1974 Decision of the Tourism Hotels Directorate of 30.10.1987
B. <u>Travel Agencies and Tour Operators Services</u> (CPC 7471)	(1) Unbound. (2) None. (3) None. (4) Unbound, except as indicated in Part I.	Cross-border supply allowed only if a deposit of 100'000 Duro is made at the National Tourism Board	Decision of the Tourism Travel Agents Directorate of 30.10.1987
C. <u>Tourist Guides Services</u> (CPC 7472)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.		

Modes of supply: presence		(1) Cross-border supply (4) Presence of natural persons	(2) Consumption abroad	(3) Commercial
Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Legal citation	
10. RECREATIONAL, CULTURAL AND SPORTING SERVICES				
A. <u>Entertainment Services</u> (including theatre, live bands and circus services) excluding cinema theatre operation services (Part of CPC 9619)	(1) Unbound. (2) None. (3) None. (4) Unbound, except as indicated in Part I.			
B. <u>News Agency Services</u> (CPC 962)	(1) None. (2) None. (3) Foreign investment is limited to 35%. (4) Unbound, except as indicated in Part I.			
C. <u>Libraries, Archives, Museums and Other Cultural Services</u> (CPC 963)	(1) Unbound. (2) None. (3) None. (4) Unbound, except as indicated in Part I.			

Modes of supply: presence		(1) Cross-border supply (4) Presence of natural persons	(2) Consumption abroad	(3) Commercial
Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Legal citation	
D. <u>Sporting Services and Other Recreational Services</u> (excluding gambling and betting services) (CPC 9641 + 9649)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.			

Modes of supply: presence		(1) Cross-border supply (4) Presence of natural persons	(2) Consumption abroad	(3) Commercial
Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Legal citation	
11. TRANSPORT SERVICES				
A. <u>Maritime Transport Services</u>				
International Transport (freight and passengers) (CPC 7211 + 7212) Domestic Freight Transportation (part of CPC 7212)	(1) None. (2) None. (3) None except that the financing of a vessel under national flag by foreign funds shall in no way endanger the influence of national interests on the shipping company and on the operation of the vessel. (4) Unbound, except as indicated in Part I.	- Only the following forms of legal entities as listed hereafter can own/or operate a vessel under national flag under the following conditions (vessel owner and/or shipping company): (a) the head office and real centre of activities must be located in on national territory; (b) at least two thirds of the shares' voting power representing at least the majority of the share-capital of a joint-stock company must be owned by nationals and/or by substantially nationally owned and effectively controlled enterprises with registered office in the national registry; (c) the whole share-capital of the "joint-stock company" must be issued in the form of registered shares. - To own and/or operate a vessel under national flag:	The following services at the port are made available to international maritime transport suppliers on reasonable and non discriminatory terms and conditions 1. Pilotage 2. Towing and tug assistance 3. Provisioning, fuelling and watering 4. Garbage collecting and ballast waste disposal 5. Port Captain's services 6. Navigation aids 7. Shore-based operational services essential to ship operations, including communications, water and electrical supplies	

Modes of supply: presence			
	(1) Cross-border supply (4) Presence of natural persons	(2) Consumption abroad	(3) Commercial
Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Legal citation
		<p>(i) the majority of the members of the board of directors and of the management must be domiciled in the national territory;</p> <p>(ii) if the board of directors or the management is constituted by one single person, this person must be a national.</p>	<p>8. Emergency repair facilities</p> <p>9. Anchorage, berth and berthing services</p> <p>10. Container handling, storage and warehousing, freight transport.</p>

Modes of supply: presence		(1) Cross-border supply (4) Presence of natural persons	(2) Consumption abroad	(3) Commercial
Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Legal citation	
<ul style="list-style-type: none"> - Maritime towing and pushing services, including anchor handling, servicing petroleum exploration and production (CPC 7214) - Maritime cargo-handling Services (CPC 741) - Storage and warehousing Services (CPC 742) - Customs clearance services for maritime transport services - Container station and depot services - Maritime agency services - Maritime freight forwarding services 	<ul style="list-style-type: none"> (1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I. 			

Modes of supply: presence		(1) Cross-border supply (4) Presence of natural persons	(2) Consumption abroad	(3) Commercial
Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Legal citation	
(d) Maintenance and repair of vessels (part of CPC 8868)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.			
C. <u>Air Transport Services</u>				
(a) Aircraft repair and maintenance services (part of CPC 8868)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.			
(b) Sales and marketing of air transport services	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.			
(c) Computer Reservation System (CRS)	(1) Unbound. (2) None. (3) Unbound. (4) Unbound, except as indicated in Part I.			
F. <u>Road Transport Services</u>				

Modes of supply: presence	(1) Cross-border supply (4) Presence of natural persons	(2) Consumption abroad	(3) Commercial
Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Legal citation
(a) Passenger transportation (CPC 7121 + 7122)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.		
(b) Freight transportation (CPC 7123)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.		
(c) Rental of commercial vehicles with operator (CPC 7124)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.		
(d) Maintenance and repair of road transport equipment (CPC 6112 + 8867)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.		
(e) Supporting services for road transport services (CPC 744)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.		

Modes of supply: presence		(1) Cross-border supply (4) Presence of natural persons	(2) Consumption abroad	(3) Commercial
Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Legal citation	
G. <u>Pipeline Transport</u>				
(a) Transportation of fuels (CPC 7131)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.			
(b) Transportation of other goods (CPC 7139)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.			
H. <u>Services Auxiliary to All Modes of Transport</u>				
(a-d) Services auxiliary to all modes of transport (CPC 741, 742, 748 and 749)	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in Part I.			
12. OTHER SERVICES NOT INCLUDED ELSEWHERE				
- Beauty and physical well-being services	(1) Unbound. (2) None. (3) None.			
- Massage services excluding therapeutic massage	(4) Unbound, except as indicated in Part I.			

Modes of supply: presence		(1) Cross-border supply (4) Presence of natural persons	(2) Consumption abroad	(3) Commercial
Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Legal citation	
- Spa services including spa management services	(1) Unbound. (2) None. (3) None. (4) Unbound, except as indicated in Part I.			
- Hairdressing and other beauty services (CPC 9702)	(1) Unbound. (2) None. (3) None. (4) Unbound, except as indicated in Part I.			