

ANNEX 9-C - EXISTING MEASURES

HEADNOTES

1. The Schedules of Australia and the Union set out, pursuant to Articles 9.10 (Non-conforming measures) and 9.17 (Non-conforming measures) the existing measures of a Party that are not subject to some or all of the obligations imposed by:

- (a) Articles 9.5 (Market access) or 9.13 (Market access);
- (b) Article 9.16 (Local presence);
- (c) Articles 9.6 (National treatment) or 9.14 (National treatment);
- (d) Articles 9.7 (Most-favoured-nation treatment) or 9.15 (Most-favoured-nation-treatment);
- (e) Article 9.8 (Senior management and boards of directors); or
- (f) Article 9.9 (Performance requirements).

2. Each entry in the Schedules sets out the following elements:

- (a) "sector" refers to the general sector in which the entry is made;
- (b) "sub-sector" refers, where applicable, to the specific sector in which the entry is made;
- (c) "industry classification" refers, where applicable, to the activity covered by the non-conforming measure in accordance with the CPC, ISIC Rev 3.1, or as otherwise expressly described in that entry. For the purposes of the Schedules of Australia and the Union:
 - (i) "ISIC Rev. 3.1" means the International Standard Industrial Classification of All Economic Activities as set out in Statistical Office of the United Nations, Statistical Papers, Series M, No.4, ISIC Rev. 3.1, 2002; and
 - (ii) "CPC" means the Provisional Central Product Classification (Statistical Papers, Series M No. 77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991);
- (d) "obligations concerned" specifies the obligation or obligations referred to in paragraph 1 that, pursuant to Articles 9.10 (Non-conforming measures) and 9.17 (Non-conforming measures),

do not apply to the listed measure or measures;

- (e) "level of government" indicates the level of government maintaining the listed measure or measures;
- (f) "measures" identifies the laws or other measures for which the entry is made. A "measure" cited in the "measures" element:
 - (i) means the measure as amended, continued or renewed as of the date of entry into force of this Agreement;
 - (ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure; and
 - (iii) in respect of the Schedule of the Union, includes any laws or other measures which implement a directive at Member State level; and
- (g) "description" sets out the non-conforming aspects of the existing measure for which the entry is made.

3. In the interpretation of an entry, all elements of the entry shall be considered. An entry shall be interpreted in the light of the relevant obligations of the Chapters or Sections against which the entry is made. The "measures" element shall prevail over all other elements.

4. For the purposes of the Schedules of Australia and the Union, an entry for a requirement to have a local presence in the territory of the Union or Australia is made against Article 9.16 (Local presence), and not against Article 9.13 (Market access) or 9.14 (National treatment). Furthermore, such a requirement is not taken as an entry against Article 9.6 (National treatment).

5. An entry made at the level of the Union applies to a measure of the Union, to a measure of a Member State at the central level or to a measure of a government within a Member State, unless the entry excludes a Member State. An entry made by a Member State applies to a measure of a government at the central, regional or local level within that Member State. For the purposes of the entries of Belgium, the central level of government covers the federal government and the governments of the regions and the communities as each of them exercises equivalent legislative powers. For the purposes of the entries of the Union and its Member States, a regional level of government in Finland means the Åland Islands.

6. The list of reservations below does not include measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards where they do not constitute a limitation within the meaning of Article 9.5 (Market access), 9.13 (Market Access), 9.6 (National treatment), 9.14 (National Treatment) and 9.16 (Local presence). These measures may include, in particular, the need to obtain a licence, to satisfy universal service obligations, to have recognised qualifications in regulated sectors, to pass specific examinations, including language examinations, to fulfil a membership requirement of a particular profession, such as membership in

a professional organisation, to have a local agent for service, or to maintain a local address, or any other non-discriminatory requirements that certain activities may not be carried out in protected zones or areas. While not listed, such measures continue to apply.

7. For greater certainty, for the Union, the obligation to grant national treatment does not entail the requirement to extend to persons of Australia the treatment granted in a Member State, pursuant to the TFEU or any measure adopted pursuant to that Treaty, including their implementation in the Member States, to:

- (a) natural persons or residents of another Member State; or
- (b) juridical persons constituted or organised under the law of another Member State or of the Union and having their registered office, central administration or principal place of business in the Union.

8. Treatment granted to juridical persons established by investors of a Party in accordance with the law of the other Party (including, in the case of the Union, the law of a Member State) and having their registered office, central administration or principal place of business within that other Party, is without prejudice to any condition or obligation, consistent with Section B (Investment liberalisation) of Chapter 9 (Investment liberalisation and trade in services), which may have been imposed on such juridical persons when established in that other Party, and which shall continue to apply.

9. For greater certainty, non-discriminatory measures do not constitute a market access limitation within the meaning of Articles 9.5 (Market access) or 9.13 (Market access) for any measure:

- (a) requiring the separation of the ownership of infrastructure from the ownership of the goods or services provided through that infrastructure to ensure fair competition, for example in the fields of energy, transportation and telecommunications;
- (b) restricting the concentration of ownership to ensure fair competition;
- (c) seeking to ensure the conservation and protection of natural resources and the environment, including a limitation on the availability, number and scope of concessions granted, and the imposition of a moratorium or ban;
- (d) limiting the number of authorisations granted because of technical or physical constraints, for example telecommunications spectra and frequencies;
- (e) requiring that a certain percentage of the shareholders, owners, partners, or directors of an enterprise be qualified or practise a certain profession such as lawyers or accountants; or
- (f) applying only to a particular limited area or specific site within the territory of a sub-central

level of government of a Party, provided such measures do not, cumulatively, impose a market access limitation with respect to the entire territory of that sub-central level of government.

10. With respect to financial services, unlike foreign subsidiaries, branches established directly in a Member State by a non-Union financial institution are not, with certain limited exceptions, subject to prudential regulations harmonised at Union level which enable such subsidiaries to benefit from enhanced facilities to set up new establishments and to provide cross-border services throughout the Union. Therefore, such branches are granted an authorisation to operate in the territory of a Member State under conditions equivalent to those applicable to domestic financial institutions of that Member State, and may be required to satisfy a number of specific prudential requirements such as, in the case of banking and securities, separate capitalisation and other solvency requirements and reporting and publication of accounts requirements or, in the case of insurance, specific guarantee and deposit requirements, a separate capitalisation, and the localisation in the Member State concerned of the assets representing the technical reserves and at least one third of the solvency margin.

11. The following abbreviations are used in the list of entries below:

EU European Union, including all its Member States

AT Austria

BE Belgium

BG Bulgaria

CY Cyprus

CZ Czech Republic

DE Germany

DK Denmark

EE Estonia

EL Greece

ES Spain

FI Finland

FR France

HR Croatia

HU Hungary

IE Ireland

IT Italy

LT Lithuania

LU Luxembourg

LV Latvia

MT Malta

NL The Netherlands

PL Poland

PT Portugal

RO Romania

SE Sweden

SI Slovenia

SK Slovak Republic