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**Council for Trade in Services**

**LDC SERVICES WAIVER**

BACKGROUND NOTE BY THE SECRETARIAT<sup>1</sup>

MEASURES NOTIFIED UNDER ARTICLES III:3 AND VII:4, AND ECONOMIC INTEGRATION  
AGREEMENTS NOTIFIED UNDER ARTICLE V:7 OF THE GATS

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<sup>1</sup> This document has been prepared under the Secretariat's own responsibility and is without prejudice to the positions of Members or to their rights and obligations under the WTO.

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## 1 INTRODUCTION

1.1. This background Note responds to a request by the LDC Group to provide information with regard to certain measures in the professional services sectors by the top-ten WTO Members in terms of trade volume. The information sought relates to:

- a. measures of general application notified under GATS Article III:3,
- b. measures under economic integration agreements notified under Article V:7, and
- c. measures on recognition notified under Article VII:4.

1.2. The top ten traders of commercial services in 2012 are set out in table 1 below. The table further sets out the notifications made by these Members under each of the three provisions for which information was requested.

**Table 1: Leading traders of commercial services\*, 2012**

| Rank | Traders                | Value of trade in billion USD | Notifications Article III:3/ |               | Notifications Article VII:4 |               | Preferential Agreements under Article V:7 |
|------|------------------------|-------------------------------|------------------------------|---------------|-----------------------------|---------------|---|
|      |                        |                               | Total                        | prof services | Total                       | prof services |   |
| 1    | United States          | 1047                          | 2                            | 0             | 5                           | 5             | 13  |
| 2    | China                  | 471                           | 57                           | 4             | 0                           | 0             | 9   |
| 3    | Japan                  | 317                           | 24                           | 8             | 1                           | 1             | 12  |
| 4    | India                  | 274                           | 4                            | 0             | 0                           | 0             | 4   |
| 5    | United Kingdom         | 268                           | 0                            | 0             | 0                           | 0             | 13 <sup>b</sup>                           |
| 6    | Germany                | 265                           | 2                            | 2             | 1                           | 0             | 13 <sup>b</sup>                           |
| 7    | Singapore <sup>a</sup> | 230                           | 0                            | 0             | 0                           | 0             | 13  |
| 8    | Korea                  | 215                           | 0                            | 0             | 0                           | 0             | 9   |
| 9    | Hong Kong, China       | 185                           | 10                           | 0             | 0                           | 0             | 3   |
| 10   | Canada                 | 183                           | 7                            | 6             | 0                           | 0             | 4   |

\*excluding intra-EU (27) trade. EU Member States are listed individually

a Does not include merchanting on the exports side.

b Refers to Agreements notified by the European Union

Source: WTO and UNCTAD Secretariats.

## 2 MEASURES OF GENERAL APPLICATION NOTIFIED UNDER ART III: 3

2.1. Pursuant to GATS Article III:3, "[e]ach Member shall promptly and at least annually inform the Council for Trade in Services of the introduction of any new, or any changes to existing, laws, regulations or administrative guidelines which significantly affect trade in services covered by its specific commitments ... ". A total of 532 notifications have been made under Article III:3 of the GATS. Of these, 116 were made by the top ten traders. The following listing of notifications also includes notifications covering access for categories of natural persons.

2.2. The United States, India, Singapore, Korea, Hong Kong China, and the United Kingdom did not notify any measures under Article III:3. One notification under paragraph 3 of Article III was made by the European Communities, but did not relate to professional services.

## 2.1 China

2.3. China made a total of 57 notifications under Article III:3. The following four notifications relate, at least in part, to specific professional services.

| Document Number/Date/Notifying Agency   | Description of the measure   |
|---|--|
| S/C/N/240;<br>24 November 2003<br><br><u>Notifying Agency:</u><br>Ministry of Health;<br>Ministry of Foreign Trade and Economic Cooperation   | Interim Measures for Administration of Sino-Foreign Joint Venture and Cooperative Medical Institutions.<br>Full text English translation of the administrative measures is available from the WTO Secretariat. The English translation is for reference only and the Chinese version shall be authentic.   |
| S/C/N/251;<br>24 November 2003<br><br><u>Notifying Agency:</u><br>Ministry of Construction;<br>Ministry of Foreign Trade and Economic Cooperation   | Rules Governing the Examination and Approval of the Establishment of Sino-foreign Engineering Design Institutes.<br>Full text English translation of the administrative measures is available from the WTO Secretariat. The English translation is for reference only and the Chinese version shall be authentic.  |
| S/C/N/254;<br>24 November 2003<br><br><u>Notifying Agency:</u><br>Ministry of Finance (The Chinese Institute of Certified Public Accountants); Ministry of Foreign Trade and Economic Cooperation | Tentative Procedures for the Administration of Sino-foreign Cooperative Accounting Firm.<br>Full text English translation of the administrative measures is available from the WTO Secretariat. The English translation is for reference only and the Chinese version shall be authentic.  |
| S/C/N/565;<br>15 September 2010<br><br><u>Notifying Agency:</u><br>Ministry of Housing and Urban-Rural Development;<br>Ministry of Commerce   | <i>Regulations on Administration of Foreign-Invested Construction and Engineering Service Enterprises.</i><br><i>Regulations on Administration of Foreign-Invested Construction and Engineering Service Enterprises</i> provides for the application procedure, examination and approval, as well as supervision and administration for the foreign investment in construction and engineering service enterprises.<br>Full text English translation of <i>Regulations on Administration of Foreign-Invested Construction and Engineering Service Enterprises</i> is available from the WTO Secretariat. The English translation is for reference only and the Chinese version shall be authentic. |

## 2.2 Japan

2.4. Japan made 24 notifications under Article III:3, eight of which relate to professional services.

| Document Number/Date/Notifying Agency   | Description of the measure  |
|---|---|
| S/C/N/62;<br><br>23 May 1997<br><br><u>Notifying Agency:</u><br>Ministry of Justice | The revision of Special Measures Law Concerning the Handling of Legal Business by Foreign Lawyers authorizes gaikokuho-jimu-bengoshi (foreign lawyers qualified by Japanese law) to represent parties in international arbitration proceedings regardless of the applicable law, and foreign lawyers (excluding gaikokuho-jimu-bengoshi) engaged in legal business in a foreign country to represent parties in international arbitration proceedings which they were requested to undertake or undertook in that country, regardless of the applicable law they are qualified for.<br><br><u>Affected commitments in the Schedule:</u><br>"Representation in arbitration is permitted, provided that the applicable law in the arbitration is the law which the service supplier is qualified to practice in Japan." in Mode (3) of the column of additional commitments in sector 1.A.a) - "consultancy on law of jurisdiction where the service supplier is a qualified lawyer". |

| Document Number/Date/Notifying Agency   | Description of the measure  |
|---|---|
| <p>S/C/N/77;<br/>18 September 1998</p> <p><u>Notifying Agency:</u><br/>Ministry of Justice</p>  | <p>Special Measures Law Concerning the Handling of Legal Business by Foreign Lawyers is revised as follows:</p> <p>(1) Relaxation of requirements of practising experience<br/>Regarding the practical experience requirement for qualification which is one of standards for approval as a <i>gaikokuho-jimu-bengoshi</i> (a foreign lawyer qualified by Japanese law), necessary period during which an applicant has to engage in practice as a foreign lawyer in the foreign country where he or she acquired a qualification to become a lawyer of that country ("home country") is shortened to three years.<br/>The period of a foreign lawyer of having engaged in legal business concerning the law of his or her "home country", on the basis of the qualification to become a lawyer of that country, in a foreign country other than the "home country" could be included to the above period.<br/>In cases where a person, after being qualified to become a lawyer of the foreign country, was under the employment of a <i>bengoshi</i> or a <i>gaikokuho-jimu-bengoshi</i> in Japan, up to one-year period of the time in total during which as an employee he or she has rendered services regarding the law of the "home country" to a <i>bengoshi</i> or a <i>gaikokuho-jimu-bengoshi</i>, shall be regarded as the period of his or her having engaged in practice as a lawyer in the "home country".</p> <p>(2) Lifting a ban on performing the legal business regarding the third country law a <i>gaikokuho-jimu-bengoshi</i> is allowed to perform the legal business regarding the third country law according to the written advice on each issue from competent persons prescribed in the afore-mentioned Special Measures Law (e.g. lawyers qualified in the third country and engaging in legal business concerning the law of that country).</p> <p>(3) Relaxation of restrictions on the objectives of joint enterprise between a <i>gaikokuho-jimu-bengoshi</i> and a <i>bengoshi</i>.<br/>Restrictions on the objectives of joint enterprise between a <i>gaikokuho-jimu-bengoshi</i> and a <i>bengoshi</i> are relaxed. The joint enterprise could institutionally offer a consistent legal service based on a comprehensive co-operation between a <i>gaikokuho-jimu-bengoshi</i> and a <i>bengoshi</i> up to the stage of ultimate solution of the following foreign legal cases:</p> <ul style="list-style-type: none"> <li>- legal cases which require knowledge of foreign law;</li> <li>- legal cases in which all or part of parties have addresses, main offices or headquarters in foreign countries; and</li> <li>- legal cases committed by a company whose the majority of stocks or shares is owned by those persons who have addresses, main offices or headquarters in foreign countries.</li> </ul> <p><u>Affected commitments in the Schedule:</u><br/>"Consultancy on law of jurisdiction where the service supplier is a qualified lawyer"; "The service supplier has engaged himself as a lawyer for at least 5 years in the jurisdiction." in ii) of Note for transparency; and "Practice of third country law and Japanese law is not permitted." in i), Mode (3) of the column of additional commitments, in sector 1.A. a).</p> |
| <p>S/C/N/128;<br/>22 September 2000</p> <p><u>Notifying Agency:</u><br/>Ministry of Justice</p> | <p>According to the revision of the Ministerial Ordinance to Provide for Criteria pursuant to Article 7, Paragraph 1, Item 2 of the Immigration-Control and Refugee-Recognition Act, the maximum period (5 years) of stay under the status of residence "Intra-company Transferee" was abolished.</p> <p><u>Affected commitments:</u><br/>"Unbound except for measures concerning the entry and temporary stay of a natural person who falls in one of the following categories:</p> <p>(a) A natural person who has been employed by a juridical person of a Member other than Japan for a period not less than one year immediately preceding the date of his application for the entry and temporary stay in Japan, and who is being transferred, for a period not exceeding 5 years, to a branch office or a juridical person constituted or registered in Japan owned or controlled by the aforementioned juridical person of a Member other than Japan, provided that he will be engaged in one of the following activities: (i) Activities to direct a branch office as its head; (ii) Activities to direct a juridical person as its board member or auditor; (iii) Activities to direct one or more departments or a juridical person; (iv) Activities which require technology and/or knowledge at an advanced level pertinent to physical sciences, engineering or other natural sciences; and</p>   |

| Document Number/Date/Notifying Agency  | Description of the measure  |
|--|---|
|  | <p>(v) Activities which require knowledge at an advanced level pertinent to jurisprudence, economics, business management, accounting or other humanities sciences.</p> <p>(b) A natural person who has been employed by a juridical person of a Member other than Japan or has been a partner in it for a period not less than one year immediately preceding the date of his application for the entry and temporary stay in Japan, and who is being transferred to Japan, for a period not exceeding 5 years and who will return to the aforementioned juridical person of a Member other than Japan upon the expiration of the said period, provided that he will be engaged in one of the following activities of professional services which may be engaged only as a natural person and not as an employee: (i) Legal services supplied by a lawyer qualified as "Bengoshi" under Japanese law; (ii) Consultancy on law of jurisdiction where the service supplier is a qualified lawyer; (iii) Legal services supplied by a patent attorney qualified as "Benrishi" under Japanese law; (iv) Legal services supplied by a maritime procedure agent qualified as "Kaijidairishi" under Japanese law; (v) Accounting, auditing and bookkeeping services supplied by an accountant qualified as "Koninkaikeishi" under Japanese law; and (vi) Taxation services supplied by a tax accountant qualified as "Zeirishi" under Japanese law" in Mode 4 of the column of limitation on market access in sector "ALL SECTORS INCLUDED IN THIS SCHEDULE".</p> |
| <p>S/C/N/202</p> <p>13 November 2002</p> <p><u>Notifying Agency:</u><br/>Ministry of Justice</p>   | <p>According to the amendment of the Lawyer Law, it has been allowed to establish judicial persons, composed of lawyers qualified as "Bengoshi" under Japanese law, in order to provide legal services.</p> <p><u>Affected commitment in the schedule:</u></p> <p>1. A. (a) "Legal services supplied by a lawyer qualified as "Bengoshi" under Japanese law" for Modes (1), (2) and (3).</p>  |
| <p>S/C/N/203;</p> <p>13 November 2002</p> <p><u>Notifying Agency:</u><br/>Ministry of Finance;<br/>National Tax Agency</p>                         | <p>According to the amendments of the Tax Accountant Law (1 April 2002), a Certified Tax Accountant Corporation, composed of only qualified tax accountants under the Tax Accountant Law, may be established to provide taxation services.</p> <p><u>Affected commitment in the schedule:</u></p> <p>1.A(c) "Taxation services supplied by a tax accountant qualified as "Zeirishi" under Japanese law" for Modes (1), (2) and (3).</p>   |
| <p>S/C/N/205;</p> <p>13 November 2002</p> <p><u>Notifying Agency:</u><br/>Japan Patent Office,<br/>Ministry of Economy,<br/>Trade and Industry</p> | <p>According to the amendment of the Patent Attorney (Benrishi) Law:</p> <ul style="list-style-type: none"> <li>- It has been allowed to establish judicial persons, composed of patent attorneys as "Benrishi" under Japanese law, in order to provide patent attorney services.</li> <li>- The residency requirement was abolished.</li> </ul> <p><u>Affected commitment in the schedule:</u></p> <p>1.A(a) "Legal services supplied by a patent attorney qualified as "Benrishi" under Japanese law" for Modes (1), (2) and (3).</p>   |
| <p>S/C/N/659;</p> <p>05 November 2012</p> <p><u>Notifying Agency:</u><br/>Ministry of Justice</p>  | <p>Due to the amendment of the Ordinance for Enforcement of the Immigration Control and Refugee Recognition Act, the periods of stay of a natural person who falls in one of the categories a) and b) in the Horizontal Commitments of Japan's schedule have been changed to 3 months, 1 year, 3 years and 5 years; in this regard, "3 months" and "5 years" are newly established. Above all, the extension of the period of stay to a maximum of 5 years will be the most significant change in this context.</p> <p>Affected commitments:<br/>categories a) and b) –defined in Limitations on market access for Mode 4), "I.HORIZONTAL COMMITMENTS".</p>   |

| Document Number/Date/Notifying Agency   | Description of the measure  |
|---|---|
| S/C/N/660;<br>05 November 2012<br><u>Notifying Agency:</u><br>Ministry of Justice | Act on Special Measures concerning the Handling of Legal Services by Foreign Lawyers<br>(1) The ban on the employment of Bengoshi (a lawyer qualified as "Bengoshi" under Japanese law) by Gaikoku-Ho-Jimu-Bengoshi (a foreign lawyer qualified under Japanese law) is removed.<br>(2) As regards a joint enterprise operated by Gaikoku-Ho-Jimu-Bengoshi and Bengoshi, or a Legal Profession Corporation, Gaikoku-Ho-Jimu-Bengoshi is allowed to freely operate a joint enterprise with Bengoshi or a Legal Profession Corporation without limitation to the scope of legal services to handle.<br>Affected commitments:<br>"Association with Bengoshi is permitted. Employment of Bengoshi is not permitted." in (ii), Mode (3) of the column of additional commitments in sector 1.A.a). "Legal advisory services on law of jurisdiction where the service supplier is a qualified lawyer" |

### 2.3 Germany

2.5. Germany made two notifications under Article III:3, both of which relate to professional services.

| Document Number and Date  | Description of the measure   |
|---|--|
| S/C/N/48;<br>28 January 1997<br><u>Notifying Agency:</u><br>Ministry of Justice,<br>Germany   | (i) Modes of supply covered by the measures:<br>(3) commercial presence<br>(4) presence of natural persons<br>(ii) The effect on Trade in Services and the impact of the measures on commitments in the Member's schedule:<br>According to the abovementioned amendments the reciprocity condition is no longer required for countries-members of WTO whose nationals supply legal advice in Germany on international public law and home country law. |
| S/C/N/49;<br>28 January 1997<br><u>Notifying Agency:</u><br>Federal Ministry of<br>Economics and the<br>Länder of the<br>Federal Republic of<br>Germany | (i) Modes of supply covered by the measures:<br>(3) commercial presence<br>(4) presence of natural persons<br>(ii) The effect on Trade in Services and the impact of the measures on commitments in the Member's schedule:<br>According to the abovementioned amendment the requirement of reciprocity for the admission to the Wirtschaftsprüfer examination of foreigners has been abolished.  |

### 2.4 Canada

2.6. Canada made six notifications relating to professional services:

| Document Number and Date    | Description of the measure  |
|-----------------------------|---|
| S/C/N/9;<br>31 January 1996 | The purpose of this notification is to fulfil the obligation of Canada under Article III:3 of the GATS which requires Members to notify the introduction of any new, or any changes to existing laws, regulations or administrative guidelines which significantly affect trade in services covered by its specific commitments under this Agreement.<br>Please be advised that in the province of Quebec, the Professional Code (R.S.Q., c. C-26) which governs all professions has been amended, with the effect that professional associations can no longer require Canadian citizenship for issuing a license. However, in certain circumstances, these associations may require permanent residency before issuing a license. |

| Document Number and Date  | Description of the measure  |
|---|---|
| <p>S/C/N/86;<br/>14 December 1998</p> <p><u>Notifying Agency:</u><br/>The Institute of Chartered Accountants of Manitoba (ICAM); Certified General Accountants Association of Manitoba (CGA-Manitoba)</p> | <p>The bylaws of the Institute of Chartered Accountants of Manitoba were amended in November 1995, removing the permanent residency requirement for membership in the provincial institute.</p> <p>The bylaws of the Certified General Accountants Association of Manitoba were amended in September 1996 to eliminate the residency requirement for membership.</p>  |
| <p>S/C/N/87;<br/>14 December 1998</p> <p><u>Notifying Agency:</u><br/>The Law Society of New Brunswick</p>  | <p>In April of 1996, proposed amendments to the <i>Law Society Act</i> of New Brunswick received assent and became effective on 1 January 1997 after being proclaimed into force. The single Mode of supply affected by the revised Act is commercial presence, which will no longer be restricted to sole proprietorships and partnerships for law firms in New Brunswick.</p> <p>The legislation permitting personal and professional incorporation of lawyers is contained in Section 37 of the amended <i>Law Society Act</i> (R.S.N.B. 1996 c. C 89). Incorporation of law practices is subject to a number of conditions, including, "a majority of the issued voting shares are legally and beneficially owned by one or more members or by one or more professional corporations, or both." Secondly, "all the directors of the corporation are members of the Society and that the corporation's practice of law is managed only by directors who are practising members in good standing." Furthermore, "all the persons who will be practising law for the corporation must be practising members of the Society", with notable exceptions for students-at-law, employees of the corporation and persons referred to in subsection 33(4) of this Act. With respect to voting shares, "no shareholder of a corporation who is a practising member shall enter into a voting trust agreement, a proxy or any other type of agreement or instrument vesting in a person who is not a practising member of the Society the authority to exercise the voting rights attached to any or all of that member's shares or restraining the practising member from freely exercising the voting rights attached to any or all of that member's shares in the corporation." The Law Society of New Brunswick requires a corporation to hold a valid permit to practise law in the province of New Brunswick.</p> |
| <p>S/C/N/88;<br/>14 December 1998</p> <p><u>Notifying Agency:</u><br/>The Nova Scotia Barristers Society</p>  | <p><i>An Act to Amend Chapter 30 of the Revised Statutes, 1989, the Barristers and Solicitors Act and Chapter 58 of the Revised Statutes, 1989, the Cape Breton Barristers Society Act</i> entered into force on 11 January 1996. The sole Mode of supply affected by the amendments is commercial presence, which will no longer be limited to sole proprietorships and partnerships in the province of Nova Scotia.</p> <p>Specifically, Section 5A was added to the Nova Scotia <i>Barristers and Solicitors Act</i>, under which law firms can incorporate subject to certain conditions. Clause 5A(7)(a) requires, all issued voting shares shall be legally and beneficially owned by one or more practising members or by a trust of which all the trustees and all the beneficiaries are practising members. Practising member is defined by the Act as a person who is a member of the Nova Scotia Barristers Society and entitled to practise as a barrister in the province of Nova Scotia. In addition, 5A(7)(b) states, all issued non-voting shares, if any, shall be legally and beneficially owned by prescribed persons or by a trust of which all the trustees and all the beneficiaries are prescribed persons. The Act further defines the term prescribed person as a person prescribed by Regulation 60 (Definition of prescribed persons). Also, 5A(8) says that <u>all</u> officers and directors of a law corporation shall be practising members. Section 5A consists of sixteen (16) different subsections and includes many other conditions for incorporation, but those stipulated above represent the more stringent requirements.</p>   |
| <p>S/C/N/89;<br/>14 December 1998</p> <p><u>Notifying Agency:</u><br/>The Institute of Chartered</p>  | <p>There is no residency requirement to become accredited as a public or chartered accountant in Prince Edward Island. Mode of supply affected is cross-border supply.</p> <p>Individuals who wish to perform public accounting activities must be members of the Institute of Chartered Accountants of Prince Edward Island, but do not require a licence to practise as such. Those who wish to perform the audit and review services customarily provided by public accountants will only be required to pay the fees applicable to a practising member.</p>   |



| Document Number and Date  | Description of the measure  |
|---|---|
| Accountants of Prince Edward Island (ICAPEI).   |   |
| <p>S/C/N/90;<br/>14 December 1998</p> <p><u>Notifying Agency:</u><br/>The Office des professions du Québec &amp; the individual Professional Orders</p> | <p>The <i>Code des Professions</i> regulates forty-three (43) professions. The amended <i>Code des Professions</i> (L.R.Q. c. C-26) does not require citizenship for accreditation as one of the twenty-three (23) designated professionals governed by the Code, nor for use of any of the twenty (20) professional titles. The amended legislation applies uniformly to all professions under the umbrella of the <i>Code des Professions</i> and came into force on the 15th of October, 1994. The Modes of supply affected by the amendment(s) are cross-border supply, consumption abroad and the movement of natural persons. The citizenship requirement for accreditation in Québec for the following professions has been removed. The page numbers refer to Canada's schedule of specific commitments (GATS/SC/16):</p> <p>chartered accountant [CPC 862; Article XVI - Market Access; Modes 1, 2 &amp; 4; p. 18-9],<br/>lawyer [CPC 861; Article XVI - Market Access; Mode 4; p. 16],<br/>architect [CPC 8671; Article XVI - Market Access; Modes 1 &amp; 4; p. 20],<br/>agrologist [CPC 86509; Article XVI - Market Access; Modes 1, 2 &amp; 4; p. 30-1],<br/>land surveyor [CPC 86753; Article XVI - Market Access; Modes 1, 2 &amp; 4; p. 35-6],<br/>professional technologist [CPC 86729; Article XVI - Market Access; Mode 1; p. 35],<br/>subsurface surveyor [CPC 86752; Article XVI - Market Access; Modes 1, 2 &amp; 4; p. 35-7]<br/>or<br/>chemist [CPC 86761; Article XVI - Market Access; Modes 1 &amp; 4; p. 35-7]</p> <p>Additionally, the following market access limitations which indicate that Québec requires citizenship for use of title are no longer in force:</p> <p>urban planner [CPC 8674; Article XVI - Market Access; Modes 1 &amp; 4; p. 24],<br/>chartered appraiser [CPC 822; Article XVI - Market Access; Modes 1 &amp; 4; p. 27-8],<br/>chartered administrator [CPC 86501 &amp; 2; Article XVI - Market Access; Modes 1 &amp; 4; p.30-1],<br/>certified management consultant [CPC 865; Article XVI - Market Access; Modes 1 &amp; 4; p. 30-1],<br/>industrial relations counsellor [CPC 86504; Article XVI - Market Access; Modes 1 &amp; 4; p. 30-1],<br/>professional technologist [CPC 86729; Article XVI - Market Access; Mode 4; p. 37],<br/>certified interpreter [CPC 87905; Article XVI - Market Access; Modes 1, 2 &amp; 4; p.39-40]<br/>or<br/>certified translator [CPC 87905; Article XVI - Market Access; Modes 1,2 &amp; 4; p. 39-40]</p> |

### 3 ECONOMIC INTEGRATION AGREEMENTS NOTIFIED UNDER ARTICLE V:7

3.1. Article V:7 of the GATS requires Members which are parties to an economic integration agreement to promptly notify any such agreement and any enlargement or any significant modification of that agreement to the Council for Trade in Services.

3.2. The top ten services traders are parties to 80 economic integration agreements notified under Article V:7 of the GATS. The following analysis focuses on access conditions granted in a representative selection of these agreements, and concentrates on sector specific commitments, limitations and non-conforming measures on professional services. It does not seek to assess the impact of horizontally applicable measures that may affect, among other sectors, also professional services.

3.3. The analysis also contains a comparison of access under Mode 4, focussing on categories of persons, duration of stay, and market access barriers. Specific agreements on professional services contained in some of the preferential agreements are described briefly. Most agreements incorporate the main elements of the GATS Annex on Movement of Natural Persons Supplying Services under the Agreement. These elements are subsequently not specifically mentioned.

3.4. The analysis of professional services commitments in preferential services agreements follows the sub-sectors as listed in the Services Sectoral Classification List, MTN.GNS/W/120 ("W/120"). Subsector "k. other" which is not further specified in the services classification is taken into account to the extent additional professional services subsectors are contained in agreements

following a positive list approach. For agreements following a negative list approach, no specific non-conforming measures for any "other" professional services were recorded.

### 3.1 United States

3.5. The following analysis provides information on commitments on professional services by the United States in its Economic Integration Agreements with Canada and Mexico (NAFTA), Chile, Singapore, and Korea.

| Agreement Name   | Date of entry into force | Date of WTO Notification |
|--|--------------------------|--------------------------|
| North American Free Trade Agreement (NAFTA)  | 01-Jan-1994              | 01-Mar-1995              |
| US - Chile   | 01-Jan-2004              | 16-Dec-2003              |
| US - Jordan  | 17-Dec-2001              | 15-Jan-2002              |
| US - Singapore   | 01-Jan-2004              | 17-Dec-2003              |
| US - Australia   | 01-Jan-2005              | 22-Dec-2004              |
| Dominican Republic - Central America - United States Free Trade Agreement (CAFTA-DR) | 1 March 2006             | 17-March 2006            |
| US - Bahrain   | 01-Aug-2006              | 08-Sep-2006              |
| US - Morocco   | 01-Jan-2006              | 30-Dec-2005              |
| US - Oman  | 01-Jan-2009              | 30-Jan-2009              |
| US - Peru  | 01-Feb-2009              | 03-Feb-2009              |
| Korea - US   | 15-Mar-2012              | 15-Mar-2012              |
| US - Colombia  | 15-May-2012              | 08-May-2012              |
| US - Panama  | 31-Oct-2012              | 29-Oct-2012              |

#### 3.1.1 Treatment of Mode 4 in the United States' Economic Integration Agreements

3.6. Under the GATS, the United States undertook Mode 4 commitments for several categories of persons:

- a. Services Salespersons are defined as persons not based in the territory of the United States and receiving no remuneration from a source located within the United States, who are engaged in activities related to representing a services supplier for the purpose of negotiating for the sale of the services of that supplier where: a) such sales are not directly made to the general public and b) the salesperson is not engaged in supplying the service. Entry for persons named in this section is limited to a ninety-day period.
- b. Intra-corporate Transferees ("ICTs") are defined as managers, executives and specialists who are employees of firms that provide services within the United States through a branch, subsidiary, or affiliate that is established in the United States, and who have been in the prior employ of their firm outside the United States for a period of not less than one year immediately preceding the date of their application for admission. Entry of ICTs is limited to a three-year period, extendable for up to two additional years for a total term not to exceed five years.
- c. Personnel Engaged in Establishment are defined as persons employed in the immediately preceding year by a foreign commercial presence, receiving remuneration from that source, who occupy a managerial or executive position with that entity and are entering the territory of the United States for the purpose of establishing a commercial presence.
- d. Fashion Models and Specialty Occupations: temporary entry for a time-period limited to three years is granted for up to 65,000 persons annually on a world-wide basis in occupations as set out in 8 USC. § 1101 (a) (15) (H) (i) (b), consisting of (i) fashion Models who are of distinguished merit and ability; and (ii) persons engaged in a specialty occupation, requiring (a) theoretical and practical application of a body of highly specialized knowledge; and (b) attainment of a bachelor's or higher degree in the specialty (or its equivalent) as a minimum for entry into the occupation in the United States. Specialty Occupations shall possess full licensure in a US state to practice in the occupation, as required, and completion of the required degree, or experience in the

specialty equivalent to the completion of the required degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty. Several further requirements including regarding wages, work conditions, and labor disputes are set out in the schedule.

3.7. Among the preferential Agreements under consideration, commitments on Mode 4 are contained in NAFTA, and the preferential Agreements with Chile and Singapore. Other Agreements do not contain specific chapters or sections on Movement of Business Persons. In the Agreement with Chile, as well as subsequent preferential Agreements, the United States also "reserves the right to adopt or maintain any measure that is not inconsistent with the United States' obligations under Article XVI of the General Agreement on Trade in Services."

3.8. In the context of NAFTA, the Parties agree to facilitate temporary entry of business persons, who are defined as citizens of a Party who are engaged in trade in goods, the provision of services, or the conduct of investment activities. Access is provided to the following categories of persons:

- a. Business Visitors, for a range of activities in the fields of research and design; growth, manufacture, and production; marketing; sales; distribution; after sales service; and general service (including tourism personnel and professionals in a listed profession.<sup>2</sup>
- b. Traders and Investors, who are defined as persons in a capacity that is supervisory, executive or involves essential skills, who are carrying on substantial business between the territories of the Parties, and establish, develop, administer or provide advice or key technical services to the operation of an investment to which the business person or the business person's enterprise has committed or is in the process of committing a substantial amount of capital.<sup>3</sup>
- c. Intra-corporate transferees, who render services in a capacity that is managerial, executive, or involves specialist knowledge, to subsidiary or affiliate, and are at least one year pre-employed.
- d. Professionals: Access is provided for professionals included in a list of some sixty-three professions, including Accountants, Architects, Engineers, Landscape Architects; Lawyers; Urban Planners; as well as some twelve specific medical categories (including nurses, physicians, dentists, and veterinarians).

3.9. For the above categories, the parties undertake not to impose prior approval procedures, petitions, labor certification tests, or numerical restriction on the temporary entry. Specifically for Professionals, parties may establish annual numerical limits, subject to certain conditions.<sup>4</sup> The United States committed to approve annually as many as 5500 initial petitions of Mexican Professionals, and to phase out the numerical limit on Mexico within the latest ten years.<sup>5</sup>

3.10. The Agreement contains several provisions aiming at the facilitation of the temporary entry of business persons, such as a requirement that fees for processing applications be limited to approximate cost of service rendered; prompt notification in writing of applicants in case of refusal of the application, including its reasons<sup>6</sup>; availability of explanations and materials that allow other parties to become acquainted with measures<sup>7</sup>; and the establishment of a temporary entry working Group.<sup>8</sup>

3.11. In chapter 11 ("Temporary Entry of Business Persons") of the preferential Agreement with Singapore, the Parties undertake commitments for Business Visitors (for a period of up to 90 days) for a range of activities similar to those specified under NAFTA; Traders and Investors; Intra-Company Transferees in a capacity of managers, executives, and specialists; and Professionals engaged in a specialty occupation requiring the theoretical and practical application of a body of

<sup>2</sup> NAFTA; Appendix 1603.A.1.

<sup>3</sup> NAFTA; Annex 1603, Section B, paragraph 1.

<sup>4</sup> NAFTA; Annex 1603, Section D, paragraphs 4 and 5.

<sup>5</sup> NAFTA; Appendix 1603.D.4., paragraphs 1 and 3.

<sup>6</sup> NAFTA; Article 1603, paragraphs 3 and 4.

<sup>7</sup> US – Singapore; Article 1604.

<sup>8</sup> US – Singapore; Article 1605.

specialized knowledge, and attainment of a post-secondary degree requiring four or more years of study. No labour certification tests can be imposed on any of these categories. For Professionals only, the Parties reserve the right to establish annual numerical limitations. The United States undertook to approve annually as many as 5400 initial applications of business persons of Singapore seeking temporary entry to engage in a business activity at a professional level.<sup>9</sup>

3.12. In Chapter 14 ("Temporary Entry of Business Persons") of the preferential Agreement with Chile, the Parties undertake commitments for Business Visitors (without specification of a time period) for a range of activities similar to those set out under NAFTA, but including specifically participation in meetings and consultations; Traders and Investors; Intra-Company Transferees in a capacity of managers, executives, and specialists; and Professionals engaged in a specialty occupation requiring the theoretical and practical application of a body of specialized knowledge, and attainment of a post-secondary degree requiring four or more years of study. Entry for any category is not subject to labour certification tests. For Professionals only, the Parties reserve the right to establish annual numerical limitations. The United States undertook to approve annually as many as 1400 initial applications of business persons of Chile seeking temporary entry to engage in a business activity at a professional level.<sup>10</sup>

### 3.1.2 Access for Professional Services

3.13. Under the GATS, the United States covered the following professional services sectors: Legal Services: practice as or through a qualified US lawyer; Legal Services: consultancy of law of jurisdiction where service supplier is qualified; Accounting, Auditing and Bookkeeping Services; taxation Services; Architectural Services; Engineering Services; Integrated Engineering Services; Urban Planning & Landscape Services. The United States GATS schedule does not cover the following three professional services contained in the W/120 Services Sectoral Classification List: Medical and Dental Services; Veterinary Services; and Services provided by midwives, nurses, physiotherapists and paramedical personnel.

3.14. As the United States uses a negative list approach for all its preferential agreements, and these services are not excluded from the scope of the agreements, these three professional services sectors can be deemed to be committed, subject to any listed non-conforming measures.

3.15. United States preferential Agreements exclude all existing non-conforming measures at state level. Numerous of the US GATS commitments on professional services contain specific limitations at state level, pertaining to residency or in-state office requirements (in Legal and Accounting services for several states) citizenship (Accounting: North Carolina; Engineering and Integrated Engineering Services: District of Columbia); and minimum number of locally licenced officers, partners, and/or directors (Architectural Services; Urban Planning and Landscape architecture Services: Michigan). Except for an illustrative list of such types of non-conforming measures in the Agreement with Korea<sup>11</sup>, the preferential Agreements do not indicate if any of the GATS limitations at state level had been phased out by the time the Agreements were concluded.

3.16. As for federal measures, the United States maintains in its GATS schedule for "legal Services: practice as or through a qualified US lawyer" under Modes 3 and 4 a market access limitation requiring US citizenship to practice before the US Patent and Trademark Office. In the preferential Agreements reviewed in the context of this background note, non-conforming measures are inscribed for "Patent Attorneys, Patent Agents, and Other Practice before the Patent and Trademark Office", requiring that a patent attorney is either US citizen or "an alien lawfully residing in the United States". "A patent agent must be a U.S. citizen, an alien lawfully residing in the United States, or a non-resident who is registered to practice in a country that permits patent agents registered to practice before the USPTO to practice in that country; the latter is permitted to practice for the limited purpose of presenting and prosecuting patent applications of applicants located in the country in which he or she resides". "a practitioner in trademark and non-patent cases must be an attorney licensed in the United States, a "grandfathered" agent, an attorney licensed to practice in a country that accords equivalent treatment to attorneys licensed in the United States, or an agent registered to practice in such a country; the latter two are permitted to practice for the limited purpose of representing parties located in the country in which he or she

<sup>9</sup> US – Singapore; Appendix 11 A.3, paragraph 1.

<sup>10</sup> US- Chile; Appendix 14.3 (D) (6) to Chapter Fourteen.

<sup>11</sup> US-Korea; Appendix I-A: Illustrative list of U.S. regional non-conforming measures.

resides. A phase-out of these citizenship and permanent residency requirements within 2 years is contained in the NAFTA Agreement.<sup>12</sup>

3.17. The United States also maintains a standard non-conforming measure, reserving the right to adopt or maintain any measure not inconsistent with its obligations under Article XVI of the General Agreement on Trade in Services. In the Agreement with Korea, for the purpose of that entry, the US schedule of Specific Commitments is modified to allow for the following preferences<sup>13</sup>:

- a. Foreign legal Consulting Services: Insert new commitments for the following states: Louisiana, New Mexico: No limitations for Modes 1-3 and Mode 4 "Unbound, except as indicated in the horizontal section." Arizona, Indiana, Massachusetts, North Carolina, Utah: No limitations Modes 1-2; for Mode 3 "in-state law office required," and Mode 4 "Unbound, except as indicated in the horizontal section. Additionally, an in-state law office required." Missouri: No limitations Modes 1-2; for Mode 3 "Association with in-state law office required," and Mode 4 "Unbound, except as indicated in the horizontal section. Additionally, association with an in-state law office required."
- b. Accounting, Auditing and Bookkeeping Services: Modify Mode 3 limitation as follows: Sole proprietorships or partnerships are limited to persons licensed as accountants, except in Iowa where accounting firms must incorporate. Modify Mode 4 limitation as follows: In addition, an in-state office must be maintained for licensure in to receive a license to perform audits in: . . .
- c. Engineering Services & Integrated Engineering Services: Replace existing description of Mode 4 with "Unbound, except as indicated in the horizontal section."

3.18. In several of the United States' preferential Agreements, specific Annexes on Professional Services have been agreed: one main feature of these Annexes is for the Parties to encourage the relevant bodies in their respective territories to develop mutually acceptable standards and criteria for licensing and certification of professional service providers and to provide recommendations on mutual recognition. The issues that may be considered include contain education, examinations, experience, conduct and ethics, professional development and re-certification; scope of practice; local knowledge; and consumer protection. Further to review by a joint body established under each preferential agreement, each Party shall encourage its respective competent authorities, where appropriate, to implement the recommendation within a mutually agreed time. Some agreements, such as NAFTA and US-Chile contain mandates to initiate domestic consultation processes to facilitate movement of foreign legal consultants and engineers. In addition to development of mutually acceptable standards and criteria, the Agreement with Korea requires the Parties to provide information concerning standards and criteria for the licensing and certification of professional services suppliers, including information on the appropriate regulatory or other body to consult regarding these standards and criteria. The Agreement further provides for the establishment of a Professional Services Working Group with representatives of the Parties to facilitate the information exchange and work on standards and criteria.

## 3.2 China

3.19. The following analysis provides information on commitments on professional services, provided by China in its Economic Integration Agreements with ASEAN; Singapore, Chile, and New Zealand.

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<sup>12</sup> Article 1210(3), and US Annex I, I-U-9.

<sup>13</sup> US-Korea; US Annex II, Appendix II-A.

| Agreement Name           | Date of entry into force | Date of WTO Notification |
|--------------------------|--------------------------|--------------------------|
| China - Hong Kong, China | 29-Jun-2003              | 27-Dec-2003              |
| China - Macao, China     | 17-Oct-2003              | 27-Dec-2003              |
| ASEAN - China            | 01-Jul-2007              | 26-Jun-2008              |
| China - New Zealand      | 01-Oct-2008              | 21-Apr-2009              |
| China - Singapore        | 01-Jan-2009              | 02-Mar-2009              |
| Pakistan - China         | 10-Oct-2009              | 20-May-2010              |
| Peru - China             | 01-Mar-2010              | 03-Mar-2010              |
| Chile - China            | 01-Aug-2010              | 18-Nov-2010              |
| China - Costa Rica       | 01-Aug-2011              | 27-Feb-2012              |

### 3.2.1 Treatment of Mode 4 in China's Economic Integration Agreements

3.20. In its GATS schedule, China made commitments concerning presence of natural persons for intra-corporate transferees (managers, executives, and specialists), for an initial stay of three years; managers, executives and specialists engaged in foreign invested enterprises for conducting business, are granted a long term stay permit for the period of the contract for an initial period of up to three years; services salespersons (persons not based in China and engaged in representing a suppliers for the purpose of sales negotiations, excluding sales to the general public) for a 90'-day period. These GATS commitments are mirrored in the agreement between China and Chile.

3.21. The Agreements with Singapore and New Zealand provide for commitments on Business Visitors which are defined as service sellers, investors or their representatives, and permits entry for up to six months.

3.22. The Agreements with ASEAN; Singapore and New Zealand contain commitments for intra-corporate transferees, defined as executives, managers, and specialists for the period of the contract, or an initial stay of up to three years. These commitments appear to be essentially equivalent to China's GATS commitment, despite slightly differing definitional elements.

3.23. The agreements with ASEAN and Singapore contain commitments on contractual service suppliers, which China commits to admit for a period of up to one year for the following professional services: (i) Accounting Services; (ii) Medical and Dental Services; (iii) Architectural Services; (iv) Engineering Services; and (v) Urban Planning Services (except general urban planning).

3.24. The agreement with ASEAN and New Zealand also covers a category of "installers and servicers" of machinery or equipment where such a service is a condition of the purchase of the machinery or equipment, for a period of up to three months, but not exceeding the length of the contract.

### 3.2.2 Access for Professional Services

3.25. The specific commitments that China has made with regard to professional services in the agreements with ASEAN, New Zealand, Singapore, and Chile appear to mirror China's GATS commitments.

## 3.3 Japan

3.26. The following analysis provides information on preferences on professional services, provided by Japan in its Economic Integration Agreements with India, Thailand, Peru and the Philippines.

| Agreement Name            | Date of entry into force | Date of WTO Notification |
|---------------------------|--------------------------|--------------------------|
| Japan - Singapore         | 30-Nov-2002              | 08-Nov-2002              |
| Japan - Mexico            | 01-Apr-2005              | 31-Mar-2005              |
| Japan - Malaysia          | 13-Jul-2006              | 12-Jul-2006              |
| Japan - Chile             | 03-Sep-2007              | 24-Aug-2007              |
| Japan - Thailand          | 01-Nov-2007              | 25-Oct-2007              |
| Japan - Indonesia         | 01-Jul-2008              | 27-Jun-2008              |
| Japan - Brunei Darussalam | 31-Jul-2008              | 31-Jul-2008              |
| Japan - Philippines       | 11-Dec-2008              | 11-Dec-2008              |
| Japan - Switzerland       | 01-Sep-2009              | 01-Sep-2009              |
| Japan - Viet Nam          | 01-Oct-2009              | 01-Oct-2009              |
| Japan - India             | 01-Aug-2011              | 14-Sep-2011              |
| Japan - Peru              | 01-Mar-2012              | 24-Feb-2012              |

### 3.3.1 Treatment of Mode 4 in Japan's Economic Integration Agreements

3.27. Under the GATS, Japan made commitments on a variety of categories of natural persons. These commitments concern the following main categories<sup>14</sup>:

- a. Intra-corporate transferees at senior managerial or specialist level, who are natural persons employed by a juridical person of another Member, for at least one year, and transferred, for a period not exceeding 5 years, to a branch office or a juridical person in Japan to (i) direct a branch office as its head; (ii) direct a juridical person as board member or auditor; (iii) direct one or more departments of a juridical person; (iv) engage in activities which require technology and/or knowledge at an advanced level pertinent to physical sciences, engineering or other natural sciences; and (v) engage in activities which require knowledge at an advanced level pertinent to jurisprudence, economics, business management, accounting or other humanities sciences. For the latter two activities, in principle college or higher education is required.
- b. Intra-corporate transferees at professional level, who are natural persons employed by a juridical person of another Member, or partner thereof, for at least one year, and transferred, for a period not exceeding 5 years, and will be engaged in one of the following activities of professional services which may be engaged only as a natural person and not as an employee: for three types of legal services under Japanese Law, i.e. lawyer ("Bengoshi"), patent attorney ("Benrishi"), and maritime procedure agent ("Kaijidairishi"); consultancy on law of jurisdiction where the service supplier is a qualified lawyer; accounting, auditing and bookkeeping services supplied by an accountant qualified as "Koninkaikeishi" under Japanese law; and taxation services supplied by a tax accountant qualified as "Zeirishi" under Japanese law.
- c. Business Visitors, who are engaged in business contacts and negotiations related to sale of a service, or establishment of a commercial presence, for a period not exceeding 90 days.

3.28. In some of its preferential agreements, Japan has extended the coverage of its Mode 4 commitments. All agreements examined contain a category of "investors" who are defined as persons engaged in activities to invest in business in Japan and manage such business; to manage business on behalf of a foreign person; or conduct business in Japan in which a person other than that of Japan has invested.

3.29. In some of its Agreements, such as those with India, Peru and the Philippines, Japan grants entry and temporary stay for one or three years (with the possibility of extension) in legal, accounting or taxation services under the laws and regulations of Japan. Whereas Japan's GATS commitments provide for access for some of the services for intra-corporate transferees only, no requirement to be an ICT is contained in these preferential agreements.<sup>15</sup> In addition, the list of

<sup>14</sup> Japan's GATS schedule of commitments, (GATS/SC/46; GATS/SC/46/Suppl.2; GATS/SC/46/Suppl.3) does not provide name or headings for the various categories; the headings used for the purposes of this Note are for explanatory purposes only.

<sup>15</sup> For example; Japan -Peru, Section 4 of Annex 8.



specific activities is expanded compared to that inscribed in the GATS schedule. The most extensive list of activities is contained in the Agreement with India, which encompasses (a) legal services supplied by a qualified "Bengoshi" lawyer, (b) legal advisory services supplied by a person qualified as a "Gaikoku-Ho-Jimu-Bengoshi", (c) legal judicial scrivener services supplied by a qualified "Shiho-shoshi", (d) legal administrative scrivener services supplied by a qualified "Gyousei-shoshi", (e) legal social insurance and labour consultancy services by a qualified "Shakai-Hoken-Romushi", (f) legal patent attorney services supplied by a qualified "Benrishi", (g) legal maritime procedure agent services by a qualified "Kaijidairishi", (h) accounting, auditing and bookkeeping services supplied by a qualified "Koninkaikeishi", (i) taxation services supplied by a qualified "Zeirishi", or (j) legal land and house surveyor services supplied by a qualified "Tochi-Kaoku-Chosashi".<sup>16</sup>

3.30. In its agreements with India, Thailand and Peru, Japan grants entry and temporary stay for one or three years (with the possibility of extension).<sup>17</sup> Natural persons from these countries are included if they are an (a) "Engineer"; (b) "Specialist in Humanities/International Services", or (c) "Skilled labour" (in relation to Indian, Thai or Peruvian cuisine with 5-7 years' experience). The agreement with India further contains a category of "Instructors" teaching (a) Indian yoga, (b) Indian cuisine, (c) Indian classical music or dance, or (d) English language who are granted entry and temporary stay for a period of one or three years (with the possibility of extension).<sup>18</sup>

3.31. In its agreement with the Philippines, Japan contains a category on the temporary stay by nurses or certified careworkers on the basis of a contract with public or private organizations or on the basis of admission to public or private training facilities.<sup>19</sup> A one year entry is granted to a qualified Filipino nurse or caretaker seeking to obtain a qualification as nurse ("Kangoshi") or certified careworker ("Kaigofukushishi") under Japanese law by pursuing a course of training, including Japanese language training for six months ; and subsequently acquiring the necessary knowledge and skills at a hospital or caregiving facility. Courses of training in a training facility for careworkers are limited to a duration of four years. The period of one year is extendable for another year twice for nurses, and three times for careworkers. Nurses and careworkers that have obtained the relevant qualifications are granted stay of up to three years, extendable. In the agreement with the Philippines, a Sub-Committee on Movement of Natural Persons is established and tasked with review of the functioning of the agreement, and to review the categories for which access is granted.

3.32. In the Agreement with Viet Nam, "entry and temporary stay shall be granted to a natural person of Viet Nam who has been qualified as a nurse under the laws and regulations of Japan ("Kangoshi") to practice nursing for a period of one or three years, which may be extended within the period of seven years from the date of obtaining a license of "Kangoshi". In addition, Japan commits to enter into negotiations with Viet Nam under a Sub-Committee on Movement of Natural Persons regarding the possibility of acceptance of Vietnamese qualified nurses and certified careworkers by Japan, with a view to reaching a conclusion of the negotiations within one year if possible, but not later than two years, after the entry into force of this Agreement.<sup>20</sup>

### 3.3.2 Access for Professional Services

3.33. Japan's commitments in professional services under the GATS extend to (a) Legal Services (for Japanese law as lawyer ("Bengoshi"); patent attorney ("Benrishi"); maritime procedure agent ("Kaijidairishi"), and consultancy on foreign law); (b) Accounting, auditing; and bookkeeping services supplied by an accountant qualified as "Koninkaikeishi" under Japanese law, (c) taxation services supplied by a qualified "Zeirishi", (d) Architectural Services by a Japanese qualified "Kenchikushi" or by a supplier using a "Kenchikushi"; (d) engineering and (f) integrated engineering services. No commitments are made for other professional services.

3.34. In its preferential Agreements on Legal Services, Japan expands the sub-sector coverage for legal services to include several more legal services professions under Japanese law (e.g. judicial and administrative scriveners ("Shiho-Shoshi"); administrative scrivener qualified as "Gyousei-

<sup>16</sup> Japan- India; Annex 7, Section 4 of Part 2 A.

<sup>17</sup> Annex 7; Sections 5 and 6 (India); Annex 8, Section 4 (Peru); Annex 7, Section 5 (Thailand).

<sup>18</sup> Japan- India Annex 7; Section 7 of Part 2A.

<sup>19</sup> Japan- Philippines; Annex 8 to Chapter 9.

<sup>20</sup> Japan -Viet Nam; Annex 7, Section 5.



Shoshi" under Japanese law; and certified social insurance and labor consultant qualified as "Shakai-Hoken-Romushi" under Japanese law). Services supplied as Bengoshi can be supplied not only by natural persons but also by a Legal Profession Corporation under Japanese law composed of one or more partners who are lawyers qualified as "Bengoshi" under Japanese law. For the practice of foreign law, the practice of third country law is permitted, according to written advice on each issue from competent persons (e.g. lawyers qualified in the third country and engaging in legal business concerning the law of that country). Association with and employment of "Bengoshi" is permitted.

3.35. In the other scheduled professional services sectors, the sector scope has been expanded to supply services not only in a capacity of Japanese qualified professionals. A new full commitment is taken for "Urban planning and landscape architectural services" (CPC 8674). In its Agreement with the Philippines, India, and Peru, Japan has included the remaining three professional services sub-sectors, ie. (h) medical and dental services, (i) veterinary services, and (j) services provided by midwives, nurses, physiotherapists and para-medical personnel. For these sectors, Mode 1 is "unbound\*"; Mode 2 is fully committed; and for subsectors (h) and (j) Mode 3 is scheduled as "Unbound except that there is no limitation on the participation of foreign capital; while for veterinary services, commercial presence is bound without limitations.

3.36. With the exception of Japan's Mode 4 commitments set out above, and the limited commitments on medical related professional services, the commitments contained in Japan's preferential agreements are aligned with Japan's revised services offer under the DDA.<sup>21</sup>

### 3.4 India

3.37. The following analysis provides information on preferences on professional services, provided by India in its Economic Integration Agreements with Singapore, Korea, Malaysia, and Japan.

| Agreement Name    | Date of entry into force | Date of WTO Notification |
|-------------------|--------------------------|--------------------------|
| India - Singapore | 1 August 2005            | 3 May 2007               |
| India - Korea     | 1 January 2010           | 1 July 2010              |
| India - Malaysia  | 1 July 2011              | 6 September 2011         |
| India - Japan     | 1 August 2011            | 14 September 2011        |

#### 3.4.1 Treatment of Mode 4 in India's Economic Integration Agreements

3.38. This section compares the conditions for entry and stay of natural persons under Mode 4. It focusses on categories of persons, sectors for which entry is provided, and duration of stay.

3.39. Under the GATS, India made commitments for

- a. "Business visitors", defined as natural persons engaged in business negotiations or for preparatory work for establishing a commercial presence for a period of not more than 90 days.
- b. Commitments for "Intra-corporate transferees" are made at the level of Managers, Executives and Specialists "who have been in the employment of a juridical person of another Member for a period not less than one year prior to the date of application and are being transferred to a branch or a representative office or a juridical person owned or controlled by the aforesaid juridical person." Entry is granted for a maximum period of five years.
- c. Commitments are also made for "Professionals", who are natural persons "to be engaged by a juridical person in India as part of a services contract for rendering professional services for which he/she possess the necessary academic credentials and professional qualifications with three years experience in the field of physical sciences, engineering or

<sup>21</sup> TN/S/O/JPN/Rev.1; 24 June 2005.

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other natural sciences. Entry and stay in this category shall be for a maximum period of one year extendable with permission for a maximum of three months."

3.40. All preferential agreements contain commitments on Business visitors, the definition of which evolves over time. In its preferential Agreement with Singapore, Business Visitors (for service sellers, advisors & establishment of an investment) can be granted a five year multiple entry visa with the right to temporary entry for a period of up to two months, extendable by one month, for all services sub-sectors. In the Agreement with Korea, stay is granted for a period of not more than 180 days or for longer duration for a maximum period of up to 5 years with a 180 days stay stipulation on a single visit". In the Agreements with Malaysia and Japan, access is granted for service sellers & establishment of an investment for a period of 180 days and multiple entry visa for up to two years, for all services sub-sectors.

3.41. All preferential agreements contain commitments on Intra-corporate transferees (Managers, Executives, and specialists). Periods of stay differ between agreements. For Korea, entry is granted for a period of one year, renewable annually for a total term not exceeding five years, for all services sub-sectors. For Singapore, Korea and Malaysia, ICTs are granted an initial visa valid for up to two years, which may be extended for up to three years at a time for a total term not exceeding eight years.

3.42. The Agreements with Japan and Malaysia contain a category of Installer and servicers, for three months or the period of the contract, whichever is less, for all services sub-sectors.

3.43. The agreement with Singapore contains a category of "Short term services suppliers" (employees of a juridical person without commercial presence in India), who are granted stay for 90 days, extendable to a total of 180 days or the length of the service contract whichever is the shorter period. Further, the Agreement contains a category of "Professionals" (having one of 127 identified specialized occupation as listed in Annex 9-A of the Agreement) who are granted temporary stay for up to one year.

3.44. The Agreement with Korea contains commitments for "Contractual Service suppliers and Independent Professionals at professional level"<sup>22</sup> for an initial period of up to one year or the period of the contract, whichever is less. A pre-employment requirement of one year applies to Contractual Service Suppliers.

3.45. For Malaysia and Japan, access is granted to "Contractual Service Suppliers" for up to one year or the period of the contract, whichever is less for the following professional services subsectors: Engineering Services (CPC 8672); Integrated Engineering Services (CPC 8673); Architectural Services (CPC 8671); and Urban Planning and landscape Architectural Services (CPC 8674).

3.46. Likewise, the Agreements with Malaysia and Japan contain a category of "Independent Professionals" who are granted access for up to one year or the period of the contract, whichever is less (Malaysia), extendable by a maximum of three months or the period of the contract (Japan), for the following professional services subsectors:

- Accounting and Book-keeping services (CPC Ex. 862)
- Engineering Services (CPC 8672)
- Integrated Engineering Services (CPC 8673)
- Architectural Services (CPC 8671)
- Urban Planning and landscape Architectural Services (CPC 8674)

3.47. In the case of Japan access is also granted for independent professionals to fulfil qualification and licensing requirements where presence in India is an essential condition for the fulfilment of these requirements in these services sectors.

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<sup>22</sup> Access is granted for Professionals on a list of 163 professional occupations, Annex 8-A.

### 3.4.2 Access for Professional Services

3.48. India did not include liberalization commitments on legal services in either its GATS or any of its Economic Integration Agreements.

3.49. India did not make GATS commitments on Accounting and Auditing Services. In all its Economic Integration Agreements, India fully liberalized Market Access and National treatment for Accounting and bookkeeping services (862) (excluding auditing services) in Modes 1 and 2, but kept Mode 3 unbound. For Mode 4, in addition to horizontal limitations, India requires in its preferential services agreements with Singapore and Malaysia that professional indemnity insurance from home country of service provider. In its EIA with Singapore, a commitment on MA and NT is made for independent professionals on the basis of a contract subject to fulfilment of criteria of registration with the relevant Accountancy body in India and obtaining of professional indemnity insurance from the home country for a period of stay of up to 12 months.

3.50. India did not make GATS commitments on Taxation Services. India made commitments in Modes 1 and 2 for "Advisory taxation services including authentication of statutory audit reports (CPC 863\*)" only in its EIA with Malaysia, limiting the personal appearance before Indian Tax authorities to Indian nationals receiving such services."

3.51. No GATS commitments were made for "Architectural Services (CPC 8671)". In its preferential services agreements with Malaysia and Japan and Korea, India fully liberalized Market Access and National Treatment for Modes 1 and 2. In its preferential services agreement with Singapore, it is stipulated under Modes 1 and 2, Market Access, that "implementation in India has to be carried out by a professional architect physically present in India and licensed by the Council of Architecture." National Treatment is fully liberalized for Modes 1 and 2.

3.52. Different commitments exist across the four agreements for commercial presence: For Malaysia, India requires under Market Access "that the establishment would be only through incorporation as partnership firm constituted by Architects with a foreign equity ceiling of 51% and subject to the condition that in the case of foreign investors having prior collaboration in that specific service sector in India, Foreign Investment Promotion Board ("FIPB") approval would be required." National Treatment is kept "unbound". For Japan and Korea, India requires under Market Access that "the establishment would be only through incorporation as a partnership firm constituted by Architects. National Treatment is fully liberalized for these two agreements. For Singapore, India requires under Mode 3, Market Access, "incorporation in India as partnership firm constituted by architects and fulfilment of other requirements as stipulated by the Council of Architecture."

3.53. For Mode 4, the agreements with Malaysia and Japan refer to the horizontal section, whereas the agreement with Singapore specifies, for both Market Access and National Treatment: "Unbound except as in horizontal commitments for employees of juridical persons and for independent professionals with a contract with a final client in India and subject also to condition of registration with the Council of Architecture.

3.54. India made GATS commitments in Engineering services (CPC 8672) subject to incorporation with a foreign equity ceiling of 51%. Modes 1 and 2 were left unbound. No commitments were made on and Integrated Engineering Services (CPC 8673). Across its preferential Agreements, India fully liberalized Market Access and National Treatment for these services in Modes 1 and 2. For commercial presence, India made full commitments to Japan and Korea. For Singapore and Malaysia, an incorporation requirement was scheduled under Market Access. For Malaysia, in addition, a foreign equity ceiling of 51% is provided for in the schedule and a condition "that in the case of foreign investors having prior collaboration in that specific service sector in India, FIPB approval would be required." National Treatment is fully bound for Singapore, and left "unbound" for Malaysia. With regard to Mode 4, the Agreement with Singapore specifies further that commitments exist for "independent professionals and employees of juridical persons in the highly skilled and managerial categories on the basis of contract with a final client in India and subject to fulfilment of qualification and licensing requirements. In the case of juridical persons, also subject to ceiling of 5% of the total work force on a project."

3.55. No GATS commitments were made for "Urban planning and landscape architectural services (CPC 8674)". Across its preferential Agreements, India fully liberalized Market Access and National treatment for Modes 1 and 2. For commercial presence, India requires incorporation as a partnership under all EIAs. For Singapore, the fulfilment of other requirements stipulated by the Council of Architecture and/or any other designated regulatory agency is scheduled. For Malaysia, a foreign equity ceiling of 51% is provided for in the schedule and a condition "that in the case of foreign investors having prior collaboration in that specific service sector in India, FIPB approval would be required." National Treatment is fully bound for Japan and Singapore, and left "unbound" for Malaysia. With regard to Mode 4, the agreements with Japan and Malaysia refer to the horizontal section. The Agreement with Singapore refers to the horizontal section and specifies further that commitments exist for "employees of juridical persons and independent professionals with a contract with the final client in India, and subject to registration.

3.56. India made no GATS commitments in Medical and Dental Services (9312) and Services provided by midwives, nurses, physiotherapists and para-medical personnel (CPC 93191). In all its economic integration agreements, the commitment on cross-border supply is limited to the "provision of services on provider to provider basis such that the transaction is between established medical institutions covering areas of second opinion to help in diagnosis of cases or in the field of research". Only for the agreement with Singapore, the commitment is "Unbound" with a "\*\*". Mode 2 is fully committed in all agreements. With regard to commercial presence, all agreements require incorporation in India, and require that that "the latest technology for treatment will be brought in". The agreement with Japan provides for a maximum foreign equity ceiling of 74%, and the agreement with Malaysia for a 51% ceiling. The Agreement with Singapore specifies that publicly funded services may be available only to Indian citizens or may be supplied at differential prices to persons other than Indian citizens. The Agreement with Malaysia requires that "in the case of foreign investors having prior collaboration in that specific service sector in India, FIPB approval would be required". National treatment is left "unbound" for Japan and Malaysia. With regard to Mode 4, reference is made to the horizontal section. For the Agreement with Singapore, Mode 4 is left unbound pending entry into force of an MRA.

3.57. India made no GATS commitments in "Veterinary Services (CPC 932)". The Agreements with Japan, Korea, and Singapore provide for full liberalization in Modes 1-3, and refer to the horizontal section for Mode 4. The agreement with Malaysia requires "that in the case of foreign investors having prior collaboration in that specific service sector in India, FIPB approval would be required". Commitments for Modes 1, 2 are fully bound, and reference to the Horizontal Section is made for Mode 4

### 3.5 European Union (United Kingdom and Germany)

3.58. The United Kingdom and Germany are among the ten largest traders of commercial services. As Member States of the European Union, their preferential commitments on trade in services are contained in Agreements concluded by the EU with third parties.

3.59. The following analysis provides information on preferences on professional services, provided by United Kingdom and Germany in the EU's Economic Integration Agreements with CARIFORUM States; Central America; and Korea.

| Agreement Name                         | Date of entry into force | Date of WTO Notification |
|--|--------------------------|--------------------------|
| European Economic Area (EEA)           | 01-Jan-q994              | 13-Sep-q996              |
| EU - Mexico                            | 01-Oct-2000              | 21-Jun-2002              |
| European Free Trade Association (EFTA) | 01-Jun-2002              | 15-Jul-2002              |
| EU - Former Yugoslav Rep. of Macedonia | 01-Apr-2004              | 02-Oct-2009              |
| EU - Chile                             | 01-Mar-2005              | 28-Oct-2005              |
| EU - CARIFORUM States EPA              | 01-Nov-2008              | 16-Oct-2008              |
| EU - Albania                           | 01-Apr-2009              | 07-Oct-2009              |
| EU - Montenegro                        | 01-May-2010              | 18-Jun-2010              |
| EU - Korea                             | 01-Jul-2011              | 07-Jul-2011              |
| EU - Colombia and Peru                 | 01-Mar-2013              | 26-Feb-2013              |
| EU - Central America                   | 01-Aug-2013              | 26-Feb-2013              |
| EU (28) Enlargement                    | 01-Jul-2013              | 25-Apr-2013              |
| EU - Serbia                            | 01-Sep-2013              | 20-Dec-2013              |

### 3.5.1 Treatment of Mode 4 in the EU's Economic Integration Agreements

3.60. Under the GATS EC-12 schedule, these are the commitments on temporary stay within a Member State, without requiring compliance with an economic needs test, of the following categories of natural persons providing services:

- a. Intra-corporate transferees provided that the service supplier is a juridical person and that the persons concerned have been employed by it or have been partners in it (other than as majority shareholders), for at least the year immediately preceding such movement at manager or specialist level. Managers are employees in senior positions direct the management of the establishment or sub-division supervise and control work of other supervisory, professional or managerial employees, and authority for personnel actions including hiring and dismissal. Specialists are persons who possess uncommon knowledge essential to the establishment's service, research equipment, techniques or management levels, high level of qualification referring to a type of work or trade requiring specific technical knowledge, including membership of an accredited profession.
- b. Services Sellers - persons not residing in the territory of a Member State to which the EC treaties apply, who are representatives of a service supplier and are seeking temporary entry for the purpose of negotiating for the sale of services or entering into agreements to sell services for that service provider, where those representatives will not be engaged in making direct sales to the general public or in supplying services themselves.
- c. Persons engaged in establishment - Persons working in a senior position who are responsible for the setting up of a commercial presence of a service provider of a Member.

3.61. The GATS schedule of the EC-12 does not contain specified periods of stay but provides that "temporary stay" is defined by the Member States and, where they exist, Community laws and regulations regarding entry, stay and work. The precise duration can vary according to the different categories of natural persons mentioned in this schedule.

3.62. In the preferential agreements under consideration, the "Temporary presence of natural persons for business purpose" is contained in distinct chapters of the agreement. Under a category of "Key Personnel", "Intra-corporate transferees" and "Business Visitors" are covered. The definitions for intra-corporate transferees are equivalent to those contained in the EC-12 GATS schedule. Business Visitors are akin to the EC-12 GATS persons engaged in establishment of a commercial presence. Periods of stay are up to three years for intra-corporate transferees and 90 days per year for Business Visitors

3.63. The Agreements under review cover a number of supplementary categories of persons:

- a. Graduate trainees – natural persons who are employed by for at least 1 year by a natural person, hold a university degree, and are temporarily transferred for career development purposes or to obtain training in business techniques and methods. The receiving juridical person may be required to submit training programme for prior approval demonstrating that purpose of stay is for training. Germany requires that the training be linked to the university degree that the graduate trainee has obtained. Graduate Trainees are permitted to stay for a period of up to one year.
- b. Business Services Sellers - natural persons of a Party who are representatives of a service supplier of a Party seeking temporary entry into the territory of the other Party for the purpose of negotiating the sale of services or entering into agreements to sell services for that service supplier. They do not engage in making direct sales to the general public and do not receive remuneration from a source located within the host. Business Services Sellers are granted stay for up to 90 days in all professional services sectors.
- c. Contractual Services Suppliers ("CSS") - natural persons of a Party employed by a juridical person of that Party which has no commercial presence in the territory of the other Party and which has concluded a bona fide contract to supply services with a final

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consumer in the latter Party requiring the presence on a temporary basis of its employees in that Party in order to fulfil the contract to provide services.

- d. Independent Professionals ("IP") - natural persons of a Party engaged in the supply of a service and established as self-employed in the territory of that Party who has no commercial presence in the territory of the other Party and who has concluded a bona fide contract to supply services with a final consumer in the latter Party requiring the presence on a temporary basis of its employees in that Party in order to fulfil the contract to provide services.
- e. Short term visitors for business purposes – this category exists only in the EU – CARIFORUM Agreement and contains a best endeavour clause to facilitate, in conformity with their respective legislation, the entry and temporary stay in their territories of short-term visitors for business purposes for the following activities: research and design; training seminars; marketing research, trade fairs and exhibitions, sales, purchasing, and tourism. Short term visitors must not be engaged in selling their goods or services to the general public or in supplying their goods or services themselves. This entry and temporary stay into their territories, when allowed, shall be for a period of up to 90 days in any 12-month period.

3.64. Specific access commitments for CSS and IP are contained only in the Agreement with CARIFORUM States, for all professional services subsectors, subject to limitations.<sup>23</sup>

- a. Access is in principle provided to CSS in all professional services subsectors, subject to the condition that the underlying service contract does not exceed 12 months; that the natural person has three years professional experience in the sector activity, a university degree or a qualification demonstrating knowledge of an equivalent level professional qualifications where this is required to exercise an activity pursuant to the laws, regulations or requirements. The temporary entry and stay shall be for a cumulative period of not more than six months and does not confer entitlement to exercise the professional title of the Party where the service is provided. The number of persons covered by the service contract shall not be larger than necessary to fulfil the contract, as it may be decided by the laws, regulations and requirements of the Party where the service is supplied;
- b. For Independent Professionals, access is provided for legal advisory services in respect of international public law and foreign law (i.e. non-EU law); architectural services; urban planning and landscape architecture services; engineering services; and integrated engineering services. The conditions for natural persons entering as CSS also apply to IP, yet the level of demonstrated professional experience is six instead of three years.

3.65. In the Agreement with Central America the Parties merely reaffirm their respective commitments under GATS as regards the entry and temporary stay of contractual services suppliers and independent professionals.<sup>24</sup> In addition to re-affirming existing commitments, the agreement with Korea contains a rendez-vous clause stipulating that no later than two years after the conclusion of the WTO Services negotiations the Trade Committee shall adopt a decision containing a list of mutually beneficial and commercially meaningful commitments concerning the access of contractual service suppliers and independent professionals taking account of any new GATS commitments.<sup>25</sup>

3.66. In all preferential agreements under review, the EU clarifies that directives on mutual recognition of diplomas only apply to EU nationals. The right to practise a regulated professional service in one Member State does not grant the right to practise in another Member State.

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<sup>23</sup> The specific limitations are discussed in the subsequent section on access for professional services.

<sup>24</sup> Article 176; EU- Central America Agreement.

<sup>25</sup> Article 7.20; EU –Korea Agreement.

### 3.5.2 Access for Professional Services

3.67. Under the GATS, both Germany and the United Kingdom undertook commitments on all ten professional services subsectors contained in W/120.

3.68. In Legal Services, the EC-12 schedule extends to "Legal advice home country law and public international law (excluding EC law)" thereby leaving out legal services in the domestic law of EU Member States. The three preferential services agreements under consideration extend the scope of the commitment to "Legal Services (CPC 861) excluding legal advisory and legal documentations and certification services provided by legal professionals entrusted with public functions". The commitments contain a footnote stipulating:

"Includes legal advisory services, legal representational services, legal arbitration and conciliation/mediation services, and legal documentation and certification services. Provision of legal services is only authorised in respect of public international law, EU law and the law of any jurisdiction where the service supplier or its personnel is qualified to practice as a lawyer, and, like the provision of other services, is subject to licensing requirements and procedures applicable in the Member States of the European Union. For lawyers providing legal services in respect of public international law and foreign law, these licensing requirements and procedures may take, inter alia, the form of compliance with local codes of ethics, use of home title (unless recognition with the host title has been obtained), insurance requirements, simple registration with the host country Bar or a simplified admission to the host country Bar through an aptitude test and a legal or professional domicile in the host country. Legal services in respect of EU law shall in principle be carried out by or through a fully qualified lawyer admitted to the Bar in a Member State of the European Union acting personally, and legal services in respect of the law of a Member State of the European Union shall in principle be carried out by or through a fully qualified lawyer admitted to the Bar in that Member State acting personally."

Full admission to the Bar in the relevant Member State of the European Union might therefore be necessary for representation before courts and other competent authorities in the EU Party since it involves practice of EU and national procedural law. However, in some Member States, foreign lawyers not fully admitted to the Bar are allowed to represent in civil proceedings a party being a national of or belonging to the State in which the lawyer is entitled to practice.

3.69. In the GATS schedule, Germany makes full commitments on cross-border supply and consumption abroad, and inscribed the following restriction on commercial presence: "[a]ccess subject to acceptance into a Bar Association according to the 'Federal Lawyers Act' which requires establishment which is restricted to sole proprietorship or partnership only". No sector-specific limitations are contained with regard to legal services in the preferential agreements with CARIFORUM States; Central America; and Korea. The United Kingdom does not maintain sector-specific limitations in either its GATS or preferential commitments. Both Germany and the United Kingdom grant access for Mode 4 for ICTs, graduate trainees; and Business Service Sellers under all preferential agreements under review; and access for CSS and IP meeting the respective requirements for natural persons of CARIFORUM States.

3.70. Under the GATS, Germany and the United Kingdom made separate commitments in "Accounting services (CPC 86212 other than "auditing services", 86213, 86219)", "Bookkeeping services (CPC 86220)", and "Auditing services (CPC 86211 and 86212 other than accounting services)". The commitment on auditing services contains an explanatory note stating: "Given the fact that commercial presence is required to exercise any auditing activity, the cross-border Mode is unbound. Only established statutory auditors can be approved by the national professional bodies. Approval is a necessary pre-condition to exercising the activity." In its preferential agreements, the former two commitments are merged into Accounting and Bookkeeping Services (CPC 86212 other than auditing services, CPC 86213, CPC 86219 and CPC 86220), the explanatory note for auditing services is removed. Under both GATS and preferential agreements, Germany and the United Kingdom made full commitments for Accounting and bookkeeping in Modes 1 and 2. For auditing services, both the GATS and preferential agreements of both countries leave Mode 1 unbound. and Mode 2 fully committed. A Mode 3 limitation by Germany in the GATS schedule on both accounting and auditing services stating that "Provision through a 'GmbH & CoKG' and 'EWIV' is prohibited" is



not contained in the preferential agreements under consideration. No sector-specific limitations for Mode 3 are scheduled by the United Kingdom either under GATS or under preferential agreements. Both Germany and the United Kingdom grant access Mode 4 access for ICTs, graduate trainees, and Business Service Sellers under all preferential agreements under review. Under the Agreement with Cariforum States, commitments for CSS are made for accounting and bookkeeping, but not auditing services.

3.71. On Taxation Services, the GATS schedule "refers to Taxation Advisory Services (CPC 863) excluding representation in court/tribunals", whereas the preferential commitments cover "Taxation advisory services (CPC 863)" and specify in a footnote that "legal advisory and legal representational services on tax matters, which are to be found under Legal Services, are not included." Germany and the UK both have full commitments in Modes 1-3 under the GATS and preferential agreements and grant access for Mode 4 for ICTs, graduate trainees, and Business Service Sellers under all preferential agreements under review. The Agreement with Cariforum States also contains commitments for CSS.

3.72. With regard to "Architectural Services and Urban planning and landscape architectural services (CPC 8671 and CPC 8674)", Germany maintains both under its GATS and preferential agreements a Mode 1 limitation stating "Application of the national rules on fees and emoluments for all services which are performed from abroad." Under the GATS, Germany inscribed under Mode 4: "Use by third country qualified professionals of the professional title is only possible on the basis of mutual recognition agreements". The United Kingdom has full commitments in the two subsectors both under GATS and preferential agreements. Both Germany and the United Kingdom grant access for Mode 4 for ICTs, graduate trainees, and Business Service Sellers under all preferential agreements under review. Under the Agreement with Cariforum States, the United Kingdom made commitments for CSS and IP, and Germany made such commitments subject to an economic needs test.

3.73. For Engineering and Integrated Engineering Services, Germany and the United Kingdom have undertaken full commitments under Modes 1-3 both under GATS and preferential commitments. With regard to Mode 4, access is granted for ICTs, graduate trainees, and Business Service Sellers under all preferential agreements under review. Under the Agreement with Cariforum States, the United Kingdom made commitments for CSS and IP, and Germany made such commitments subject to an economic needs test.

3.74. In "Medical and Dental Services", and "Services provided by Midwives provided by Nurses, Physiotherapists and Paramedical Personnel ", Germany and the United Kingdom have not made commitments under cross-border supply under either GATS or preferential agreements, and have made full commitments under Mode 2. As concerns commercial presence, Germany restricts access "to natural persons only. Economic needs test for medical doctors and dentists who are authorized to treat members of public insurance schemes. The criterion is shortage of doctors and dentists in the given region." The economic needs test is maintained throughout the three preferential agreements under consideration. Under its GATS Mode 4 commitments, Germany imposes a "condition of nationality for doctors and dentists which can be waived on an exceptional basis in cases of public health interest." It further imposes "[a] zero quota for midwives." The GATS and preferential commitments of the United Kingdom require under commercial presence that "[e]stablishment for doctors under the National Health Service is subject to medical manpower planning." Under the preferential agreements, access is granted for ICTs, graduate trainees, and Business Service Sellers. The Agreement with Cariforum States contains for both the United Kingdom and Germany commitments for CSS for medical and dental, midwives, and nurses subject to an economic needs test.

3.75. With regard to "Veterinary Services", Mode 1 and 2 commitments are left "unbound" and "None", respectively, for Germany in its GATS and preferential agreements. The United Kingdom's GATS commitments are unbound, with preferential agreements stipulating that access is "[u]nbound except for veterinary laboratory and technical services supplied to veterinary surgeons, general advice, guidance and information e.g.: nutritional, behaviour and pet care." With regard to commercial presence, Germany's Mode 3 GATS commitments restrict access to natural persons, yet this entry is not contained in the preferential agreements. Likewise, a restriction by the United Kingdom that access can take place through partnership or natural persons only, is not contained in the preferential agreements under review. On Mode 4, Germany's GATS commitments contain a nationality requirement. Under all preferential agreements under



review, Mode 4 access is granted for ICTs, graduate trainees; and Business Service Sellers. Under the Agreement with Cariforum States, both the United Kingdom and Germany made commitments for CSS subject to an economic needs test.

3.76. The EC-12 schedule also contains as an "other" professional service subsector "Supply of pharmaceutical goods to the general public (pharmacists)". For both Germany and the United Kingdom, cross-border supply is unbound and consumption abroad is fully committed. The United Kingdom maintains no sector-specific limitations for Modes 3 and 4. Germany limits commercial presence in this sector "only to natural persons and subject establishment of new pharmacies only through the take-over of an existing pharmacy-store. With regard to presence of natural persons, Germany inscribed in its GATS schedule a nationality and residency requirement. In preferential commitments, the commitment is rephrased as "Retail sales of pharmaceuticals and retail sales of medical and orthopaedical goods (CPC 63211) and other services supplied by pharmacists", with a footnote clarifying that as a general rule, this activity is reserved to pharmacists. In some Member States, only the supply of prescription drugs is reserved to pharmacists. In its preferential agreements Germany subjects authorisation for commercial presence to an "economic needs test. Main criteria: population and geographical density of existing pharmacies." As concerns Mode 4, Germany maintains a nationality requirement for ICTs and graduate trainees in its preferential agreements. The United Kingdom does not maintain any sector-specific limitations in Modes 3 and 4.

### 3.6 Korea

3.77. The following analysis provides information on preferences on professional services, provided by Korea in its Economic Integration Agreements with ASEAN, EFTA, EU, Peru, and the United States.

| Agreement Name    | Date of entry into force | Date of WTO Notification |
|-------------------|--------------------------|--------------------------|
| ASEAN – Korea     | 01-May-2009              | 8 July 2010              |
| EFTA – Korea      | 01-Sep-2006              | 23-Aug-2006              |
| EU – Korea        | 01-Jul-2011              | 07-Jul-2011              |
| Korea - Chile     | 01-Apr-2004              | 08-Apr-2004              |
| Korea - India     | 01-Jan-2010              |                          |
| Korea - Singapore | 02-Mar-2006              | 21-Feb-2006              |
| Korea - US        | 15-Mar-2012              | 15-Mar-2012              |
| Peru - Korea      | 01-Aug-2011              | 09-Aug-2011              |

#### 3.6.1 Treatment of Mode 4 in Korea's Economic Integration Agreements

3.78. This section compares the conditions for entry and stay for scheduled categories of natural persons under Mode 4. It focusses on categories of persons, sectors for which entry is provided, and duration of stay. The Agreement between the United States and Korea does not specify individual categories of persons for which entry is granted.

3.79. Under the GATS, Korea provides access for the following categories of natural persons:

- a. Intra-corporate transferees: natural persons who are employees of firms that supply services through 100% foreign ownership, joint venture companies or branches established in Korea and who have been in the employ of their firm for a period of not less than one year and fall in the categories of Executives, Senior managers, or Specialists. The duration of stay is limited to a period not exceeding three years that may be extended if extension is deemed to be necessary.
- b. Persons engaged in establishment: Executives or Senior managers who are responsible for the setting up, in Korea, of a commercial presence of a service supplier of a Member when the service supplier has no representative office, branch or subsidiary in Korea and the persons are not engaged in making direct sales or supplying services. Entry and stay is limited to a period of 90 days

- c. Business Visitors: natural persons who are engaged in activities or representing a service supplier for the purpose of negotiating for the sale of the services. Entry and stay is limited to a period of 90 days.

3.80. With regard to Business Visitors, the commitments to ASEAN and EFTA mirror Korea's GATS commitments. In the Agreement with Peru, Business Visitors are granted access for a specified list of activities, including meetings and consultation, marketing, sales, after sales service, and general services (see Appendix 11 A -1 of the Agreement), for a period of up to 90 days, beyond which the visitor must register as an alien with the competent immigration office.

3.81. Commitments for Intra-corporate transferees reflect Korea's GATS commitments.

3.82. The Agreements with ASEAN and EFTA contain commitments on "Contractual Service suppliers" (employees of a juridical person, requiring at least one year pre-employment) for a specified number of activities, including consultancy for accounting and architectural services, and certain computer engineering services, for a period of not more than one year. National Treatment is "unbound".

3.83. The Agreement with Peru provides for access to Professionals (as either contractual service suppliers of intra-corporate transferees) as per a list of 66 specified activities, for a maximum duration of 1 year. Access is further provided for Traders and Investors: including persons establishing a business, for up to 2 years.

3.84. In its Agreement with the European Union, Korea provides access to Key Personnel (includes business services sellers and persons engaged in setting up of a commercial presence, as well as intra-corporate transferees in the Managers and specialists category) and Graduate Trainees for Architectural Services, Engineering Services, Integrated Engineering Services, Urban Planning Services, and Veterinary Services.

### 3.6.2 Access in Professional Services

3.85. Korea has no commitments on Legal Services under the GATS. Commitments on Legal Services exist however in all preferential agreements considered in this Note. For the Agreements with ASEAN and EFTA, the scope is restricted to home country and public international law, excluding representation for juridical or other statutory procedures, legal representation related to notarial deeds; activities related to real property, intellectual property, mining rights related to Korea; and legal cases concerning family or inheritance involving Korean nationals or property. Modes 1 and 2 are fully bound. Commercial presence is permitted in the form of a representative office, but association with or employment of Korean lawyers is prohibited. Foreign Legal Consultants are required to stay a minimum of 180 days per year. As an additional commitment for ASEAN, within 2 years, cooperative agreements allowed with Korean law firms. The Agreement with the EU and US follow different scheduling approaches, maintain several restrictions which result in an equivalent degree of liberalization to the Agreements of EFTA and ASEAN. In addition, however, Korea commits to permit no later than five years after entry into force of the Agreement to allow law firms of the Member States of the European Union and the United States "to establish, subject to certain requirements consistent with this Agreement, joint venture firms with Korean law firms. Korea may impose restrictions on the proportion of voting shares or equity interests of the joint venture firms. For greater certainty, such joint venture firms may, subject to certain requirements, employ Korean licensed lawyers as partners or associates."

3.86. Korea made commitments under the GATS in "Accounting, auditing and book-keeping Services (CPC 862)" with the following limitations: Modes 1 and 2 are unbound for auditing services, and commercial presence requires supply of the service sole proprietorships, auditing task forces, joint accounting offices, and incorporated partnerships of certified public accountants (CPAs). Foreign accountants wishing to practice as certified public accountants must have field experience of two years in Korea after passing the CPA examination. Under Additional commitments, it is specified that foreign accounting firms may supply consultancy services on foreign accounting standards and auditing, training, technology transfer and information exchange to Korean firms, including through movement of persons for a one-year period that may be extended if extension is deemed to be necessary.

3.87. The Agreement with ASEAN and EFTA does not provide preferences. The Agreement with the EU permits supply of auditing services through Modes 1 and 2, provided they are supplied by supplier meeting the qualifications set out for Mode 3. The Agreement further specifies that EU and US certified public accountants or accounting corporations are permitted to supply consulting services regarding the accounting laws of their jurisdiction, or international accounting laws and standards through offices established in Korea. Further, EU or US certified public accountants are allowed to work in Korean accounting corporations, and within 5 years, EU and US certified public accountants will be allowed to invest in Korean accounting corporations subject to certain minority shareholding requirements. The Agreement with Peru does not contain the preferences granted to EU and US suppliers.

3.88. Korea made commitments under the GATS in Taxation services (CPC 863) with the proviso that tax reconciliation services and tax representative services remain unbound for Modes 1 and 2, and that the supply of such services through Mode 3 is limited to sole proprietorships, tax reconciliation task forces, joint tax accounting offices and incorporated partnerships by certified tax accountants. Foreign tax accountants wishing to practice as CTAs must have field experience of six months in Korea after passing the CTA examination.

3.89. The Agreement with ASEAN and EFTA does not provide preferences. The Agreements with the EU permits supply of tax reconciliation services and tax representative services through Modes 1 and 2, provided they are supplied by supplier meeting the qualifications set out for Mode 3. The Agreement with the EU and the US further specifies that EU or US certified tax accountants or tax agency corporations are permitted to supply tax consulting services regarding the tax laws of their respective jurisdiction, or international tax laws and tax systems through offices established in Korea. Further, EU and US certified tax accountants are allowed to work in Korean tax agency corporations, and within 5 years, EU and US certified tax accountants will be allowed to invest in Korean tax agency corporations subject to certain minority shareholding requirements.

3.90. In its GATS schedule, Korea made full Mode 2 and 3 commitments on Architectural Services, and specifies that supply of services by foreign architects through joint contracts with architects licensed under Korean law will be allowed from January 1, 1996. Foreign architects licensed under their home country's law may acquire a Korean architect license by passing a simplified examination which covers only two of the regular test's six subjects: architectural laws and regulations and architectural design. No further preferences are contained in any Economic Integration Agreements.

3.91. Korea has made full commitments in Modes 1-3 for Engineering, Integrated Engineering, and Urban landscape architectural services.

3.92. In preferential agreements, Korea also made full commitments in Modes 1-3 on Veterinary Services (CPC 932) (EU), EFTA, ASEAN (where Mode 1 is kept unbound). Medical and Dental Services are excluded from the commitments. In the Agreement with the EU, Korea specifies that it "reserves the right to adopt or maintain any measure with respect to human health services." Except for preferential measures provided in the Act on Designation and Management of Free Economic Zones (Law No. 8372, April 11, 2007), and the Special Act on Establishment of Jeju Special Self-Governing Province and Creation of Free International City, relating to establishment of medical facilities, pharmacies, and similar facilities, and the supply of remote medical services to those geographical areas specified in those Acts.

### 3.7 Hong Kong, China

3.93. The following analysis provides information on preferences on professional services, provided by Hong Kong, China in its Economic Integration Agreements with New Zealand, and EFTA. The preferences in professional services are provided to China as part of CEPA, concluded in 2003.

| Agreement Name                 | Date of entry into force | Date of WTO Notification |
|--------------------------------|--------------------------|--------------------------|
| Hong Kong, China - China       | 29 June 2003             | 27 December 2003         |
| Hong Kong, China – New Zealand | 1 January 2011           | 3 January 2011           |
| Hong Kong, China - EFTA        | 01 October 2012          | 27 September 2012        |

### 3.7.1 Treatment of Mode 4 in Hong Kong, China's Economic Integration Agreements

3.94. Under the GATS schedule, Hong Kong, China made commitments in Mode 4 for the intra-corporate transfer of general managers, senior managers, and specialists, which have to be pre-employed for at least one year, and will be granted entry limited to one year in the first instance, but extendable for up to five years. The number of natural persons who may seek entry under these commitments shall be reasonable having regard to the size and the nature of the business operation of the relevant establishment in Hong Kong.

3.95. In its preferential agreement with EFTA and New Zealand, Hong Kong China grants the following access in professional services.<sup>26</sup>

- Business Visitors (business meetings, negotiations on services sales or establishment of commercial presence), for a period not exceeding 90 days, for all sectors.
- Intra-corporate transferees (senior managers and specialists) with a one year pre-employment requirement for one year in the first instance, but extendable for up to five years. The number of natural persons who may seek entry under these commitments shall be reasonable having regard to the size and the nature of the business operation of the relevant establishment in Hong Kong. Access in professional services is limited for EFTA natural persons to (i) Accounting, auditing and bookkeeping services, (ii) Taxation services, (iii) Architectural services, and (iv) Urban planning and landscape architectural services. In addition to these professional services, access for natural persons of New Zealand also extends to (v) Engineering Services; (vi) Integrated Engineering Services, and (vii) Veterinary Services.

3.96. The Agreement with New Zealand contains a number of additional obligations supporting the movement of natural persons: the Parties commit to expeditiously process a business person's application for immigration (either making a decision or providing information to the applicant on when the decision can be taken within 10 working days of receipt of the application).<sup>27</sup> In addition, parties commit to publish the requirements for temporary entry, including explanatory material and relevant forms and documents that will enable business persons of the other Party to become acquainted with the Party's requirements; and upon modifying or amending the requirements for temporary entry that affect the temporary entry of business persons, ensure that the information is updated by the date that modification or amendment comes into effect.

### 3.7.2 Access for Professional Services

3.97. Hong Kong, China did not undertake commitments on "Legal Services" under the GATS. In its agreements with EFTA and New Zealand, Hong Kong, China reserved the right to adopt or maintain any measure with respect to legal services.

3.98. In the WTO, Hong Kong, China undertook commitments on "Accounting, auditing, and bookkeeping services", limited to auditing and advisory services on matters such as financial management consultancy, company formation and restructuring, raising of capital, debt-rescheduling, receivership and liquidation. The commitments are unbound for cross border supply, and contain a limitation on commercial presence requiring that statutory auditing services be performed by natural persons licensed as certified public accountants, either as sole proprietors or in partnership. The agreement with EFTA and New Zealand expand the commitment under commercial presence to corporate practices.

3.99. Under Hong Kong, China's GATS commitments, "taxation services" are limited to advisory and consulting services to enterprises or individuals on compilation of tax returns, tax planning, review, assessment and back-duty work. Cross border supply is unbound in Mode 1, and fully

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<sup>26</sup> Note that for computer services and environmental services, Hong Kong, China also grants access to Installers and Servicers of machinery or equipment from both preferential trading partners, for a period not exceeding three months in any 12-month period and subject to an economic needs test.

<sup>27</sup> Chapter 14, Article 5.

committed ("None") in Modes 2 and 3. No reservations in Modes 1-3 are maintained in the preferential agreements with EFTA and New Zealand.

3.100. Hong Kong, China does not have GATS commitments in "Architectural Services". In its preferential agreements with EFTA and New Zealand, supply of Architectural services through Modes 1 and 3 is permitted subject to the following restriction: to be registered as a Registered Architect, a person has to have one year's relevant experience in Hong Kong, China before the date of his application for registration; and to be ordinarily resident in Hong Kong, China.

3.101. Hong Kong, China does not have GATS commitments in "Engineering Services" and "Integrated Engineering Services". In its preferential agreements with EFTA and New Zealand, supply of Engineering and Integrated Engineering Services through Modes 1 and 3 is permitted subject to the following restriction: to be registered as a Registered Professional Engineer, a person has to have one year's relevant experience in Hong Kong, China before the date of his application for registration; and to be ordinarily resident in Hong Kong, China.

3.102. Hong Kong, China does not have GATS commitments in "Urban Planning and Landscape Architectural Services". In its preferential agreements with EFTA and New Zealand, supply of Urban Planning and Landscape Architectural Services through Modes 1 and 3 is permitted subject to the following restrictions: to be registered as a Registered Professional Planner or a Registered Landscape Architect, a person has to have one year's relevant experience in Hong Kong, China before the date of his application for registration; and to be ordinarily resident in Hong Kong, China.

3.103. Hong Kong, China does not have GATS commitments in "Medical and Dental Services", and "Services provided by Midwives, Nurses, Physiotherapists and Para-medical Personnel", and, in its preferential agreements, reserves the right to adopt or maintain any measure with respect to these services.

3.104. Hong Kong, China does not have GATS commitments in "Veterinary Services" and does not maintain any reservations on these services in its preferential agreements.

### 3.8 Singapore

3.105. The following analysis provides information on preferences on professional services, provided by Singapore in its Economic Integration Agreements with the United States, China, Costa Rica, India, and Chinese Taipei. The Agreements with these five out of a total of 13 preferential Agreements have been selected as a representative sample.

| Agreement Name             | Date of entry into force | Date of WTO Notification |
|----------------------------|--------------------------|--------------------------|
| New Zealand - Singapore    | 01-Jan-2001              | 04-Sep-2001              |
| Japan - Singapore          | 30-Nov-2002              | 08-Nov-2002              |
| EFTA - Singapore           | 01-Jan-2003              | 14-Jan-2003              |
| Singapore - Australia      | 28-Jul-2003              | 25-Sep-2003              |
| US - Singapore             | 01-Jan-2004              | 17-Dec-2003              |
| India - Singapore          | 01-Aug-2005              | 03-May-2007              |
| Jordan - Singapore         | 22-Aug-2005              | 07-Jul-2006              |
| Korea - Singapore          | 02-Mar-2006              | 21-Feb-2006              |
| Panama - Singapore         | 24-Jul-2006              | 04-Apr-2007              |
| China - Singapore          | 01-Jan-2009              | 02-Mar-2009              |
| Peru - Singapore           | 01-Aug-2009              | 30-Jul-2009              |
| Costa Rica - Singapore     | 01-Jul-2013              | 16-Sep-2013              |
| Singapore - Chinese Taipei | 19-Apr-2014              | 22-Apr-2014              |

#### 3.8.1 Treatment of Mode 4 in Singapore's Economic Integration Agreements

3.106. Singapore has made GATS commitments for intra-corporate transferees, at the level of managers, executives, and specialists, who are pre-employed for a period of not less than one

year in their parent firm outside Singapore. The duration of stay is limited to three years, extendable to a total of five years. No commitments for other categories of natural persons were made.

3.107. In its preferential Agreements with the United States, Singapore maintains GATS-equivalent commitments on intra-corporate transferees. In its Agreements with India and China, the duration of stay is limited initially to two years extendable twice by three years for a total of eight years. This sequencing has also been included in Singapore's revised DDA offer of June 2005 (TN/S/O/SGP/Rev.1).

3.108. In its Agreements with the United States, India, and China, Singapore makes commitments on Business Visitors. Definitions of Business Visitors vary slightly in the various Agreements but contain the usual definitional features of primary or complete remuneration of the person in his home country: in the Agreement with the United States, business visitors can be engaged in a number of activities, such as "research and design"; "growth, manufacture, and production"; "marketing"; "sales"; "customs brokerage"; "after sales services", and "tourism personnel" and "translators or interpreters". The maximum duration of stay is 90 days without employment authorization. The Agreement with India defines Business Visitors as service sellers, advisors and persons engaged in establishment of an investment. Business Visitors can be granted a five year multiple entry visa with the right to temporary entry for a period of up to two months, extendable by one month, for all services sub-sectors. The Agreement with China defines Business Visitors as service sellers, investors or their representatives, and permits entry for 60 days, extendable by 30 days for 5 year multiple entry visa holders, and 30 days, extendable by 30 days for other Chinese Business Visitors.

3.109. The Agreement with the United States contains a category of "Traders and Investors", defined as persons that who carry on substantial trade in goods or services; establish, develop, administer or provide advice or key technical services to the operation of an investment to which the business person or its enterprise has committed a substantial amount of capital. The persons would be engaged in a capacity that involves supervisory or executive functions, or essential skills.

3.110. The Agreements with the United States and India cover a category of "Professionals". In the Agreement with the United States, access is granted to professionals engaged in a business activity at professional level or to perform related training functions. Professionals are defined as persons engaged in a specialty occupation requiring theoretical and practical application of a body of specialized knowledge, and the attainment of a post-secondary degree requiring four or more years of study. Singapore has the right to establish annual numerical limits regarding the temporary entry of professionals. The Agreement with India contains a list of 127 specialized occupations including in the fields of accounting, architectural, engineering, and medical occupations, for which temporary stay for up to one year can be granted. In its specific commitments, Singapore reserves the right to limit the number of doctors.

3.111. The Agreements with India and China contain commitments on a category of "short term service suppliers", and "contractual service suppliers", respectively. In the Agreement with India, short term service suppliers are employees of a juridical person without commercial presence in India, and are granted stay for 90 days; it is extendable to a total of 180 days or the length of the service contract whichever is the shorter period. In the Agreement with China, Singapore commits to allow contractual services suppliers who are managers, executives, or specialists, stay of 90 days, extendable by a maximum of a further 90 days of the length of the contract, whichever is shorter.

3.112. In its most recent preferential agreements on trade in services, with Costa Rica and Chinese Taipei, Singapore reserves the right to adopt or maintain any measure with respect to the supply of a service by the presence of natural persons, or other movement of natural persons, including immigration, entry or temporary stay.

### **3.8.2 Access for Professional Services**

3.113. Singapore did not undertake GATS commitments in "Legal Services". In its preferential Agreement with the United States, Singapore made commitments with certain restrictions on the provision of Singapore law, requiring *inter alia*



- a. admission to the Singapore Bar, valid Practising Certificate, and membership in the Singapore Law Society for persons practicing local law;
- b. that US law enterprises may only provide legal services in relation to Singapore law through a Joint Law Venture or Formal Law Alliance with a Singapore law enterprise, and only to the extent allowed by laws and regulations. Singapore undertakes to modify these conditions and restrictions in favour of U.S. law enterprises as follows:
  - i. the minimum number of U.S. lawyers resident in Singapore which the U.S. law enterprise is required to maintain in a Joint Law Venture or a Formal Law Alliance shall be reduced from 5 to 3, at least 2 of whom shall be equity partners or a member of the board of directors of the U.S. law enterprise;
  - ii. the minimum relevant experience required of the 3 U.S. lawyers referred to in paragraph (i) shall be considered on an aggregate basis of 15 years, rather than on the basis of an individual experience of 5 years for each U.S. lawyer;
  - iii. the minimum required relevant experience for U.S. lawyers working in a Joint Law Venture who wishes to apply to practise Singapore shall be reduced from 5 years to 3 years;
  - iv. relevant experience for the purposes of paragraphs (ii) and (iii), in the case of Joint Law Ventures, shall be expanded from banking and finance work to include any of the related areas specified by a report of the Legal Services Review Committee. and
  - v. a Joint Law Venture involving a U.S. law enterprise shall be allowed to practice corporate law in addition to banking and finance law.

3.114. U.S. lawyers may prepare and participate in international commercial arbitration in Singapore provided that, where the law applicable to the dispute to which the arbitration relates is the law of Singapore, the U.S. lawyer shall appear jointly with a Singapore lawyer who possesses a valid Practising Certificate.

3.115. In its agreement with India, Singapore made commitments on consumption abroad for "legal consultancy services for Indian law (CPC 861\*\*). Singapore undertook no specific commitments on legal services in its agreement with China. In its agreements with Chinese Taipei and Costa Rica, Singapore reserved the right to maintain or adopt any measure affecting the supply of legal services in Singapore law.

3.116. Under the GATS, Singapore made commitments in "Accounting/Auditing Services" with the limitation in cross-border supply and commercial presence that "public accountants must be effectively resident in Singapore or at least one of the partners of the firm must be effectively resident in Singapore".

3.117. In its Agreement with the United States, a non-conforming measure on Auditing Services specifies that only persons who are registered with the Institute of Certified Public Accountants of Singapore (ICPAS) and the Public Accountants Board (PAB) and resident in Singapore can be appointed as approved company auditors. All the partners in partnerships providing auditing services shall be Singapore registered public accountants. Corporations providing auditing services shall have to comply with the following requirements:

- a. not less than two-thirds of the board of directors (including the Chairman) shall be Singapore registered public accountants;
- b. the business of the corporation shall be under the control of the directors who are Singapore registered public accountants; and
- c. not less than two-thirds of the voting shares of the corporation shall be owned by Singapore registered public accountants.

3.118. In its agreement with India, Singapore made full commitments on "accounting, auditing and bookkeeping services, except for financial auditing services (CPC 862\*\*). For financial auditing services (CPC 86211), the limitation contained in the GATS schedule for the entire "Accounting/Auditing Services" sector is maintained, i.e. the requirement that public accountants and partners of the firm are effectively resident in Singapore.

3.119. Singapore's commitments to China appear to mirror Singapore's GATS commitments.

3.120. In its agreement with Chinese Taipei, no specific non-conforming measures were listed for this sector.

3.121. In its agreement with Costa Rica, Singapore scheduled the following non-conforming measures "Financial auditing services " and "Other Tax-related services":

- a. Only public accountants, accounting firms, accounting corporations or accounting LLPs may provide public accountancy services. Public accountants must be registered with the Accounting and Corporate Regulatory Authority (ACRA) and fulfil the registration requirements under the Accountants Act, including requirements pertaining to qualifications, experience as well as membership with the Institute of Certified Public Accountants of Singapore (ICPAS).
- b. Accounting firms, accounting corporations and accounting LLPs must be approved by the Public Accountants Oversight Committee, which is a Board Committee of ACRA under the Accountants Act. The business of an accounting firm, accounting corporation or an accounting LLP, so far as it relates to the provision/supply of public accountancy services in Singapore, shall be under the control and management of one or more directors (in the case of accounting corporation) or a partner (in the case of accounting firm) who is / are (a) public accountant(s) ordinarily resident in Singapore.

3.122. Under the GATS, Singapore made commitments in "Taxation Services" with the limitation in cross-border supply and commercial presence that "public accountants must be effectively resident in Singapore or at least one of the partners of the firm must be effectively resident in Singapore. Only Public Accountants registered with the Public Accountants Board can practice as tax consultants for local tax law".

3.123. In its Agreement with the United States, no non-conforming measures on taxation services are listed. In the agreements with India and China, full commitments are made for "Taxation services except for other tax related services (CPC 863\*\*). For other tax related services (CPC 86309)", the Mode 1 and 3 limitations contained in the GATS schedule for the entire "Taxation Services" sector is maintained, i.e. the requirement that public accountants and partners of the firm are effectively resident in Singapore, and that only registered public accountants can practice as consultants for local tax laws. The Agreement with Chinese Taipei does not contain any listed non-conforming measures in this sector.

3.124. Singapore undertook full GATS commitments on "Architectural Services" for cross-border supply and consumption abroad. For commercial presence, a number of limitations are scheduled:

- a. For "limited corporations", only registered architects or allied professionals shall be directors. A minimum shareholding requirement by registered architects or allied professionals is listed. Work must be under the control and management of a registered and shareholding architect with a valid certificate who is ordinarily resident in Singapore.
- b. For "unlimited corporations", only registered architects or allied professionals shall be directors. Membership of the corporation is limited to registered architects or allied professionals or their nominees, or need to be directors, managers, or employees. The business must be under the control and management of a registered and shareholding architect with a valid practicing certificate who is ordinarily resident in Singapore.
- c. For "partnerships", partners must be registered architects or allied professionals with valid practicing certificates; supply of the service must be under the control and



management of a partner who is a registered architect with a valid certificate who is ordinarily resident in Singapore.

3.125. These GATS commitments appear to be mirrored in Singapore's agreement with China.

3.126. In its Agreement with the United States, architectural services are covered with the following non-conforming measures: only persons who are registered with the Board of Architects (BOA) and resident in Singapore are allowed to provide architectural services. All corporations and partnerships providing architectural services (including those that are providing architectural services as part of a multi-disciplinary corporation or practice) must obtain a license from the BOA. To qualify for the license, the corporation or partnership must:

- a. be under the control and management of a director or partner who is a Singapore registered architect resident in Singapore; where a multi-disciplinary corporation or partnership is concerned, the business of the corporation or partnership relating to architectural services must be under the control and management of a director or partner who is a Singapore registered architect resident in Singapore; and
- b. where corporations are concerned, at least 51% of the directors of the corporation must be Singapore registered architects or allied professionals; where partnerships are concerned, the beneficial interest in the capital assets and profits of the partnership must be held by Singapore registered architects or allied professionals. Allied professionals are Singapore registered land surveyors and engineers.

3.127. In its agreement with India, Singapore undertakes full commitments in Modes 1-3 for "Architectural Services (CPC 8671)". Similarly, the Agreement with Chinese Taipei does not contain any non-conforming measures in this sector.

3.128. Singapore undertook specific GATS commitments on "Engineering Services" for the following specified activities: (a) Civil engineering services; (b) Production engineering services (c) Mechanical engineering services; (d) Electrical engineering services; (e) Electronic engineering Services; (f) Aeronautical engineering services; (g) Marine engineering services; (h) Naval architectural engineering services; (i) Industrial engineering services; (j) Chemical engineering services. Commitments for cross-border supply and consumption abroad are fully bound. For commercial presence, a number of limitations are scheduled:

- a. For "limited corporations", only registered professional engineers or allied professionals shall be directors. A minimum shareholding requirement by registered professional engineers or allied professionals is listed. Work must be under the control and management of a registered and shareholding professional engineers with a valid certificate who is ordinarily resident in Singapore.
- b. For "unlimited corporations", only registered professional engineers or allied professionals shall be directors. Membership of the corporation is limited to registered professional engineers or allied professionals or their nominees, or need to be directors, managers, or employees. The business must be under the control and management of a registered and shareholding professional engineer with a valid practicing certificate who is ordinarily resident in Singapore.
- c. For "partnerships", partners must be registered professional engineers or allied professionals with valid practicing certificates; supply of the service must be under the control and management of a partner who is a registered professional engineer with a valid certificate who is ordinarily resident in Singapore.

3.129. In its agreement with China, commitments on engineering services appear to mirror those of the GATS schedule, with the improvement that for limited corporations, only 80% (instead of 100%) of directors need to be registered professional engineers or allied professionals.

3.130. In its Agreements with the United States and Costa Rica, engineering services are covered with the following non-conforming measures for "Professional Engineering Services", equivalent to those listed for architectural services: Only persons who are registered with the Professional

Engineers Board (PEB) and resident in Singapore are allowed to provide professional engineering services. All corporations and partnerships providing professional engineering services (including those which are providing professional engineering services as part of a multi-disciplinary corporation or practice) must obtain a license from PEB. To qualify for the license, the corporation or partnership must:

- a. be under the control and management of a director or partner who is a Singapore registered professional engineer resident in Singapore; where a multi-disciplinary corporation or partnership is concerned, the business of the corporation or partnership relating to professional engineering services must be under the control and management of a director or partner who is a Singapore registered professional engineer resident in Singapore; and
- b. where corporations are concerned, at least 51% of the directors of the corporation must be Singapore registered professional engineers or allied professionals; where partnerships are concerned, the beneficial interest in the capital assets and profits of the partnerships must be held by Singapore registered professional engineers or allied professionals. Allied professionals are Singapore registered land surveyors and architects.

3.131. In its agreement with India, Singapore undertook full commitments for "Engineering and integrated engineering services (CPC 8672 and 8673) for Modes 2 and 3, and maintained a national treatment limitation on Mode 1, providing that physical implementation in Singapore of the service has to be carried out by a professional engineer physically present in Singapore. A similar reservation is contained in the list of non-conforming measures with regard to commitments towards Costa Rica, namely that "the implementation in Singapore of professional engineering works which require approval by the authorities shall be carried out by a professional engineer physically present in Singapore for the duration when the project is being implemented."

3.132. The Agreement with Chinese Taipei does not contain any listed non-conforming measures in this sector.

3.133. Singapore did not undertake specific GATS commitments on "Urban planning and landscape architectural services".

3.134. The Agreements with the United States and Chinese Taipei do not contain any listed non-conforming measures in this sector. The agreement with India limits commitments on "Urban planning services (CPC 86741) to Mode 2, and contains full commitments in Modes 1-3 for "Landscape architectural services (CPC 86742)". The agreement with China contains no commitments on Urban planning services, but full commitments in in Modes 1-3 for "Landscaping services (CPC 86742\*\*)"

3.135. Singapore undertook GATS commitments for "Medical Services" in Mode 2, and scheduled as limitation on commercial presence that "the number of new foreign doctors registered each year may be limited depending on the total supply of doctors". Cross-border supply remains unbound with a "\*\*", indicating the lack of technical feasibility of the provision of the service through this Mode of supply. Singapore further undertook commitments on "Dental Services", without limitations in Modes 1-3.

3.136. In its Agreement with the United States, Singapore identifies as non-conforming measures on cross-border supply and local presence that only persons who are registered with the Singapore Medical Council and resident in Singapore can provide medical services. A person seeking to be registered with the Singapore Medical Council who is not a Singapore citizen will have to complete 6 years of conditional registration before he or she is eligible for full registration. Singapore further reserves the right to adopt or maintain and limits on the number of doctors and pharmacists who can practice in Singapore. For any health related professionals (including doctors, dentists, nurses and midwives) Singapore reserves the right to adopt or to maintain any measure in relation to the recognition of educational and professional qualifications for the purposes of admission, registration, and qualification of health-related professionals such as contact lens practitioners, dentists, doctors, nurses, midwives, and traditional Chinese medicine practitioners.

3.137. In its agreements with India and China, Singapore made full commitments in Mode 2 for "Medical Services (CPC 93121 and 93122)", left Market Access for Mode 1 unbound, and maintained the limitation contained in its GATS schedule for Mode 3 that "the number of new foreign doctors registered each year may be limited depending on the total supply of doctors". Full commitments are made in both agreements for Modes 1-3 for "Dental Services (CPC 93123)".

3.138. In its agreement with Chinese Taipei, Singapore reserves the right to maintain or adopt any limit on the number of service suppliers providing, including but not limited to: medical services, dental services, pharmacy services, deliveries and related services, nursing services, physiotherapeutic and para-medical services and allied health services and optometry and opticianry services. Further, Singapore reserves the right to maintain or adopt any measure with respect to the regulation of service suppliers providing, including but not limited to, the following services: medical services, dental services, pharmacy services, deliveries and related services, nursing services, physiotherapeutic and para-medical services and allied health services and optometry and opticianry services.

3.139. The Agreement with Costa Rica contains a registration and residency requirement for persons supplying medical and dental services.

3.140. Singapore undertook GATS commitments on "Veterinary Services", without limitations in Modes 1-3. These commitments are reflected in the preferential Agreements under review.

3.141. Singapore made no GATS commitment for "Services provided by midwives, nurses, physiotherapists, and para-medical personnel". No commitment is made in the preferential agreement with China. In its Agreement with the United States, Singapore lists as non-conforming measures for cross-border supply residency requirements for "contact lens practitioners", and registration and residency requirements for nurses and midwives. In its agreement with India, full commitments are made in Modes 2 and 3 for " Services provided by midwives, nurses, physiotherapists, and para-medical personnel (CPC 93191\*\*). Mode 1 of the Market Access column is left unbound. In its agreement with Chinese Taipei, Singapore reserves the right to introduce limitations on services and the regulation of suppliers, (For a full description, see paragraphs 3.135 to 3.138 under medical services above). In its Agreement with Costa Rica, Singapore provides that "Only persons who are registered with the Singapore Nursing Board and/or its successor body and resident in Singapore are allowed to provide nursing or midwifery services."

### 3.9 Canada

3.142. The following analysis provides information on preferences on professional services, provided by Canada in its Economic Integration Agreements with Mexico and the United States in NAFTA; Chile, Peru, Colombia, and Panama.

| Agreement Name                              | Date of entry into force | Date of WTO Notification |
|---|--------------------------|--------------------------|
| North American Free Trade Agreement (NAFTA) | 01-Jan-1994              | 01-Mar-1995              |
| Canada - Chile                              | 05-Jul-97                | 30-Jul-97                |
| Canada - Peru                               | 01-Aug-09                | 31-Jul-09                |
| Canada - Colombia                           | 15-Aug-11                | 07-Oct-11                |
| Canada - Panama                             | 01-Apr-13                | 10-Apr-13                |

#### 3.9.1 Treatment of Mode 4 in Canada's Economic Integration Agreements

3.143. Canada made GATS commitments for the following categories of natural persons:

- a. Business Visitors for the purposes of business meetings, business contacts including negotiations for the sale of services and/or other similar activities including those to prepare for establishing a commercial presence, for a period of up to 90 days.

- b. Intra-corporate transferees, at the level of managers, executives, and specialists, who are pre-employed for a period of not less than one year, to work in same juridical person or a juridical person in Canada which is owned or controlled or affiliated with the aforementioned juridical person. The duration of stay is limited to a maximum of three years.
- c. Professionals
  - i. For an activity at professional level, as part of a service contract obtained by a juridical person of another Member. Professions committed include Engineers and Architects, Agrolologists, Forestry Professionals, Geomatics Professionals, and Land Surveyors. For each profession, minimum educational requirements and alternative credentials and requirements for admission are set out. Recognition of academic credentials and professional qualification by the respective professional association in Canada is required. Professionals under this category are permitted to stay for a period of up to 90 days, depending on the length of the contract;
  - ii. For an activity at professional level, as part of a service contract granted by a juridical person engaged in substantive business operations in Canada and obtained by a juridical person of another Member. The three professions committed are Foreign legal Consultants; Urban Planners; and Senior Computer Specialists (with a limit of 10 entrants per project). As in i. above, minimum educational requirements and alternative credentials and requirements for admission are set out, and recognition of academic credentials and professional qualification by the respective professional association in Canada is required. Professionals under this category are permitted to stay for a period of up to 90 days, depending on the length of the contract, but only once per year. Multiple entries within the period of authorized entry may be permitted.

3.144. The undertakings with regard to movement of business persons under NAFTA are set out in the section covering the United States, and apply mutatis mutandis also to Canada, without specific numerical undertakings.

3.145. In the Agreement with Chile, entry is granted for the same categories as in NAFTA, i.e. Business Visitors, Traders and Investors, Intra-Company Transferees, and Professionals. For Professionals, the permitted activities include the following professions: Accountant; Architect; Engineer; Landscape Architect; Lawyer; Pharmacist; Urban Planner; Dentist, Dietician; Medical Laboratory Technologist; Nutritionist; Occupational Therapist; Physician (teaching or research only); Physiotherapist; Psychologist; Recreational Therapist; Registered Nurse; Veterinarian; Pharmacist. Minimum professional and educational requirements, and alternative credentials are set out. No numerical limits are to be established for these activities.

3.146. In the Agreement with Colombia, access is granted to a category of "Professionals and Technicians", whereby professionals are defined as nationals of a Party who are engaged in a specialty occupation within the National Occupation Classification (NOC) levels O and A. requiring theoretical and practical application of a body of specialized knowledge and the appropriate certification/license to practice; and attainment of a post-secondary degree in the specialty requiring four or more years of study, as a minimum for entry into the occupation. Technicians are defined similarly, but require only the attainment of a technical degree requiring two or more years of study as a minimum for entry into the occupation. No labour certification tests or numerical limitations can be imposed. For professional services, all professions are permitted except inter alia all health, education, and social services occupations, as well as judges, lawyers and notaries. Access for foreign legal consultants is permitted. In addition, access is granted for 19 activities at technician level, including Civil Engineering Technologists and Technicians; Mechanical Engineering Technologists and Technicians; Industrial Engineering and Manufacturing Technologists and Technicians; Construction Inspectors and Estimators; Engineering Inspectors, Testers and Regulatory Officers; Supervisors in various technical activities; Electrical and Electronics Engineering Technologists and Technicians; Electricians; Plumbers; Chefs.

3.147. In the Agreement with Panama, the category of Professionals is replaced by "Persons engaged in a specialty occupation" with identical requirements as set out for professionals in the

Agreement with Colombia. The list of activities includes the following professions: Actuary; Aeronautical Engineer, Electronics Engineer, Software Engineer and Designer; Systems Engineer; as well as another 30 occupations falling under General, Computer and Information Systems, and Science categories. No numerical limits are to be established for these activities. No category of Technicians exists under this Agreement.

### 3.9.2 Access for Professional Services

3.148. Canada made GATS commitments in the following professional services sectors: Legal Services (advisory services on foreign and public international law only): consultancy of law of the jurisdiction where a service supplier is qualified; Accounting, Auditing and Bookkeeping Services; Taxation Services (excluding legal services); Architectural Services; Engineering Services; Integrated Engineering Services; Urban Planning & Landscape Services. The following three professional services contained in the W/120 Services Sectoral Classification List are not covered by Canada's GATS commitments: Medical and dental Services; Veterinary Services; and Services provided by midwives, nurses, physiotherapists and paramedical personnel.

3.149. As Canada uses a negative list approach in all its preferential agreements, and the above-mentioned services are not excluded from the scope of these agreements, these three services sectors, as well as all only partially inscribed sectors, can be deemed to be covered by the preferential agreements, subject to any listed non-conforming measures.

3.150. Canada excludes in all its preferential Agreements all existing non-conforming measures of all provinces and territories. For professional services, most if not all of Canada's limitations inscribed in its GATS schedule are limitations taken at provincial and territorial level. Such limitations include (i) citizenship requirements (e.g., Legal Services, Mode 4 –Quebec; Auditing– Modes 1, 2, 4 – Manitoba, Quebec); (ii) permanent residency requirements (e.g., Legal Services, Mode 4 - Prince Edward Island, Alberta, Ontario, and Newfoundland; Auditing, Modes 1,2 and 4 – Alberta, Ontario); (iii) residency requirements (e.g., Architectural services, Modes 1 and 4, Nova Scotia, new Brunswick, Newfoundland); and (iv) commercial presence requirements (e.g., Auditing – Modes 1 and 2 – Saskatchewan; Nova Scotia, Manitoba, Ontario, Newfoundland). In the preferential Agreements with Colombia, Panama, and Peru, Canada also reserves the right to adopt or maintain for cross-border trade in services any measure that is not inconsistent with Canada's obligations under Article XVI of the GATS.

3.151. For the supply through commercial presence of foreign legal advisory services; Accounting, Auditing and Bookkeeping Services; and Architectural Services, Canada's GATS schedule contains a legal form limitation requiring sole proprietorship or partnership. To the extent that these measures are imposed at provincial or territorial level, they would not require specific listing in Canada's preferential services agreements.

3.152. Canada's preferential Agreements contain one specific non-conforming measure in professional services, for Auditing Services, for Modes 1, 2, and 4: the non-conforming measure requires :

- a. Banks to have a firm of accountants to be auditors of the bank. A firm of accountants must be qualified as set out in the Bank Act. Among the qualifications required is that two or more members of the firm must be ordinarily resident in Canada and that the member of the firm jointly designated by the firm and the bank to conduct the audit must be ordinarily resident in Canada.
- b. Insurance companies, cooperative credit associations, and trusts or loan companies to have an auditor who can either be a natural person or a firm of accountants. An auditor of such an institution must be qualified as set out in the Insurance Companies Act, the Cooperative Credit Associations Act or the Trust and Loan Companies Act, as the case may be. In the case where a natural person is appointed to be the auditor of such a financial institution, among the qualifications required is that the person must be ordinarily resident in Canada. In the case where a firm of accountants is appointed to be the auditor of such a financial institution, the member of the firm jointly designated by the firm and the financial institution to conduct the audit must be ordinarily resident in Canada.

3.153. Canada's preferential Agreements contain Annexes on Professional Services. In the Agreements with Chile and Panama, the Annexes require the Parties to encourage the relevant bodies in their respective territories to develop mutually acceptable standards and criteria for licensing and certification of professional services providers and provide recommendations on mutual recognition. The issues that may be considered include contain education, examinations, experience, conduct and ethics, professional development and re-certification; scope of practice; local knowledge; and consumer protection. Where the Parties agree, each Party shall encourage the relevant bodies in its territory to develop procedures for the temporary licensing of professional service providers of the other Party. These provisions are equivalent to provisions contained in NAFTA, and also used by several preferential agreements of the United States. The agreement with Chile, also contains a mandate to initiate domestic consultation processes to facilitate movement of foreign legal consultants and temporary licensing of engineers. The Agreement with Peru contains Guidelines for Mutual Recognition Agreements or Arrangements for the Professional Services Sector, which is built upon a Decision by the Council on trade in Services relating to "Guidelines for Mutual Recognition Agreements or Arrangements for the Accountancy Sector", (SL/L/38).

#### 4 RECOGNITION MEASURES NOTIFIED UNDER GATS ARTICLE VII:4

4.1. Paragraph 4 of Article VII on Recognition requires Members to (i) inform the Council for Trade in Services of its existing recognition measures within 12 months from the date on which the WTO Agreement takes effect for it; (ii) promptly inform the Council for Trade in Services as far in advance as possible of the opening of negotiations on a mutual recognition agreement or arrangement in order to provide adequate opportunity to any other Member to indicate their interest in participating in the negotiations before they enter a substantive phase; (ii) promptly inform the Council for Trade in Services when it adopts new recognition measures or significantly modifies existing ones and state whether the measures are based on a mutual recognition agreement or arrangement.

4.2. To date, a total of 54 notifications have been received under Article VII:4. Seven of these notifications were made by a Member who is a top ten trader of commercial services.<sup>28</sup> Of these, six notifications relate to professional services. They are summarized in the table below.

| Document number and date of notification | Notifying Member, Sector, Member(s) affected  | Description of the Measure   |
|--|---|--|
| S/C/N/51;<br>10 February<br>1997         | <u>Notifying Member:</u><br>United States<br><br><u>Sector:</u><br>Accounting Services<br><br><u>Member affected:</u><br>Canada | The agreement (consistent with the Canada-US Free Trade Agreement, which took effect on 1 January 1989) is based on a detailed review of the examination, education, and experience requirements that must be met in order to be licensed as a certified public accountant (CPA) in the United States and as a chartered accountant (CA) in Canada. The participants found that the designations were of comparable standing when the examination requirements were combined with the education and experience requirements discussed in the agreement. The participants, therefore, agreed that successful completion of the US Uniform CPA Examination and certification/licensure by a state board of accountancy, or successful completion of the Canadian Uniform Final Examination and membership in a provincial institute of chartered accountants, should be the respective basic requirement for reciprocal recognition of the CPA and CA designations. Candidates meeting that requirement, who are therefore eligible for reciprocity under the Agreement, should be permitted to qualify without duplicating all of the steps in the licensing process.<br><br>The participants further agreed that the completion of a minimum period of accounting experience within the United States as a requirement for original CPA qualification or within Canada as a requirement for original CA qualification may be prescribed as a condition for receiving reciprocity in the Canadian or US jurisdiction(s) into which entry is sought. |

<sup>28</sup> One notification, by the European Commission on direct insurance other than life insurance with Switzerland; S/C/N/30, 24 March 1997, applies to Germany and the United Kingdom, but is not contained in this count.

| Document number and date of notification | Notifying Member, Sector, Member(s) affected   | Description of the Measure   |
|--|--|--|
|  |  | <p>With respect to professional examination, the agreement recommends to the respective regulatory authorities in the United States and Canada that Canadian chartered accountants seeking to use the title of CPA in the United States and US CPAs seeking to use the title of CA in Canada, be permitted to qualify without taking the entire uniform accountancy examination for the jurisdiction in which licensure is sought. Rather, they would be permitted to take an abbreviated examination designed to demonstrate satisfactory knowledge of national and local legislation, standards, and practices for the jurisdiction in which licensure is sought.</p> <p>Subsequent to the agreement, the AICPA and NASBA established a permanent body, the International Qualifications Appraisal Board (IQAB), to administer the agreement and to handle reciprocity requests from foreign professional associations and/or foreign licensing authorities. The US IQAB, just as its Canadian counterpart organization, makes recommendations concerning the standing of a given foreign profession qualification. In the United States, the recommendations must be approved by the AICPA and the NASBA Boards before they go to the state regulators.</p>   |
| S/C/N/52;<br>10 February<br>1997         | <p><u>Notifying Member:</u><br/>United States</p> <p><u>Sector:</u><br/>Architectural Services</p> <p><u>Member affected:</u><br/>Canada</p>   | <p>The agreement, based on provisions of the US-Canada Free Trade Agreement, establishes a series of requirements for certification applicable to US and Canadian architects. Qualified architects may use NCARB certification as demonstration of professional competence to practice in either country in jurisdictions, which have submitted satisfactory Letters of Undertaking. Qualifications relate to education, examination and experience. A uniform written examination has been in use in the United States and Canada since 1986. Applicants in Canada take the same examination as applicants in the United States.</p>  |
| S/C/N/53;<br>10 February<br>1997         | <p><u>Notifying Member:</u><br/>United States</p> <p><u>Sector:</u><br/>Engineering Services</p> <p><u>Members affected:</u><br/>Australia,<br/>Canada, Hong Kong, Ireland, New Zealand, South Africa, United Kingdom and United States.</p> | <p>Signatories to the agreement recognize the substantial equivalency or comparability of the respective accreditation process (i.e., policies, criteria and procedures used to accredit the courses/programs) leading to the "Accredited Engineering Degree" (first professional degree or basic engineering education).</p> <p>Within the Accord, each signatory has defined its approach to educational quality assurance for graduates entering the engineering profession or those seeking initial professional recognition. The Accord does not address the mutual recognition of professional credentials, such as the Professional Engineer (P.E.) or Chartered Engineer.</p> <p>Each of the accrediting or professional bodies participating in the Washington Accord remains independent and autonomous. Each country is responsible for its own accrediting standards and evaluation procedures. There may be periodic additions, deletions or other changes in the status of institutions and programs. Each of the organizations that entered into the Accord maintains a current data bank with information on its programs.</p> <p>The Accord is administered through a Secretariat, which rotates among the signatories. The Secretariat prepares and distributes approved lists of accredited programs covered under the Accord. It is a clearinghouse for official communications among the signatories, information on criteria and procedures, and new membership affairs.</p> |
| S/C/N/68;<br>13 March<br>1998            | <p><u>Notifying Member:</u><br/>United States</p> <p><u>Sector:</u><br/>Accounting Services</p> <p><u>Member affected:</u><br/>Australia</p>   | <p>The agreement is based on a detailed review of the examination, education, and experience requirements that must be met in order to be licensed as a certified public accountant (CPA) in the United States and as a chartered accountant (CA) in Australia. The participants found that the designations were of comparable standing when the examination requirements were combined with the education and experience requirements discussed in the agreement. The participants agreed that reciprocity should be available to Australian CAs and U.S. CPAs on the terms stated in the agreement (attached to the notification).</p>  |

| Document number and date of notification | Notifying Member, Sector, Member(s) affected  | Description of the Measure   |
|--|---|--|
| S/C/N/298<br>27 February<br>2004         | <u>Notifying Member:</u><br>Japan<br><br><u>Sector:</u><br>Engineering Services<br><br><u>Member affected:</u><br>None              | <p>The MRA, entitled "A Bilateral Framework to facilitate mobility for Mutual Recognition of Registered/Licensed Engineers", was initiated under Japan's Trade and Economic Framework with Australia and signed on 1 October 2003 by four signatories: The Institution of Professional Engineers, Japan (IPEJ), Japan's Ministry of Education, Culture, Sports, Science and Technology (MEXT), the Institution of Engineers, Australia (Engineers Australia), and the National Engineering Registration Board in Australia. The MRA is intended to permit the registration/licensing in each country of registered/licensed engineers who are also APEC Engineers from the other country. The MRA sets out standards, criteria, procedures and measures which:</p> <ol style="list-style-type: none"> <li>a. are based on objective and transparent criteria, such as competence and the ability to provide a service;</li> <li>b. are not more burdensome than necessary to ensure the quality of a service; and</li> <li>c. do not constitute a disguised restriction on the cross border provision of a service.</li> </ol> |
| S/C/N/539;<br>18 March<br>2010           | <u>Notifying Member:</u><br>United States<br><br><u>Sector:</u><br>Engineering Services<br><br><u>Member affected:</u><br>Australia | <p>This Mutual Recognition Agreement is between the Texas Board of Professional Engineers and the Institution of Engineers Australia (Engineers Australia). It is intended to permit the mutual recognition of Registered/Licensed Engineers from a Home Jurisdiction in the Host Jurisdiction.</p> <p>In Texas, the MRA provides for the granting of a temporary license to qualified engineers from Australia without examination, except for local tests for codes and ethics. The license is renewable annually for a period of three years.</p> <p>In Australia, the MRA provides for the granting of a full license to qualified engineers from Texas without examination, except for local tests for codes and ethics. The license is renewable annually.</p>   |