

GATS 2000

REQUEST FROM THE EC AND ITS MEMBER STATES (HEREAFTER THE EC)

TO

MALAYSIA

GENERAL REMARKS

At the WTO Ministerial Conference in Doha in November 2001, Ministers agreed that initial requests for specific commitments should be submitted by 30 June 2002.

In line with this decision, and committed to the objectives and principles stated in the GATS, in particular Article IV and XIX GATS, as well as the negotiating guidelines agreed by the Council for Trade in Services on 29 March 2001, the EC encourages Malaysia to participate actively in the negotiations.

The EC consider that the progressive liberalisation of services is of benefit for all members, including developing and least developed countries. The EC recognises the importance of liberalisation being underpinned by domestic regulatory frameworks designed to ensure the achievement of public policy objectives.

This request covers horizontal commitments, MFN exemptions and the following service sectors:

- Professional services
- Business services (other than professional services)
- Postal and courier services
- Telecommunications services
- Construction and related engineering services
- Distribution services
- Environmental services
- Financial services
- Tourism and travel related services
- News agency services
- Transport services
- Energy services

The EC proposes that Malaysia's current GATS commitments are revised in accordance with this request. The EC is both seeking improved commitments and clarification of existing commitments as set out in this Request. The EC is furthermore looking for a reduction in scheduled limitations whether these are horizontal or sector specific in nature. In so doing, the EC is not seeking the dismantling of public services nor the privatisation of state owned companies.

In conformity with the objectives set out in the EC's overall approach to services negotiations (document S/CSS/W/15), the EC reiterates its commitment to promote regulatory disciplines in accordance with Article VI:4 of the GATS. The EC, however, reserves its right to address at any time to Malaysia specific requests concerning regulatory issues.

The EC further requests that commitments are entered in accordance with the scheduling guidelines adopted by the Council of Trade in Services on 23 March 2001 (S/L/92). In particular, for each commitment or limitation entered the EC requests:

- that the sector and sub-sector are clearly identified in accordance with the classification list in Document MTN.GNS/W/120 or other internationally recognised classification (e.g. Financial Services Annex) and/or corresponding CPC number. If there is no appropriate classification, the schedule should contain a sufficiently detailed definition to avoid any ambiguity as to the scope of the commitment. In that respect, the EC would like to recall the classification or list of activities proposed in its negotiating proposals with regard to postal and courier, environmental and energy services. While discussions on classification in these sectors are still ongoing, the EC would like to invite Malaysia to present its offer in accordance with this approach.

- that any remaining limitation on market access (hereafter "MA") or on national treatment (hereafter "NT") are clearly described and only be inscribed in the market access or national treatment columns if the measure is of a nature foreseen by Articles XVI-XVII GATS.

The EC remains available to provide any clarification and answer any question on this request. Questions can be addressed to the European Commission via the EC GATS contact point (mailbox address: TRADE-GATS-CONTACT-POINTS@cec.eu.int), via the Delegation of the European Commission in Geneva, or directly to the European Commission (Directorate-General Trade, Unit D2 (Trade in services, including e-commerce), Brussels, B-1049, Belgium, fax 32-2-299 24 35).

Note: The EC reserves the right to revise and/or supplement this request. For each service sector, W120 classification has been followed unless expressly indicated and CPCs refer to the Provisional CPC classification. The precise scope for each sector is without prejudice to the EC's final positions on classification issues and to the EC's classification of their existing commitments.

HORIZONTAL COMMITMENTS

EC REQUEST TO MALAYSIA

MODE 3

- Acquisitions, mergers and take-overs require approval if more than 15% (voting rights) of a single foreign interest (30% of aggregate) or more than RM 5 million. Approval also required if result is foreign ownership or control. Finally approval needed is control of Malaysian corporations though joint-venture or other arrangement. Approval depends of interest of the State-test (MA). **EC request:** remove restrictions.
- Land property and real estate (NA). Approval required and may be denied if purpose is speculations and against state interests. **EC request:** remove restrictions.
- Incentives/Preferences. Limited to Malaysian-owned corporations. **EC request:** Clarify this discriminatory measures.
- Operational Headquarters (MA/NT). Under other business services and financial services Malaysia restricts wholly foreign owned companies to certain sectors and operations under specific conditions. **EC Request:** Clarify the scope of these commitments.

MODE 4

Intra-corporate transferees

- Only two specialists per organisation are permitted without being subject to labour market testing. **EC request:** Eliminate any requirement for labour market testing for intra-corporate transferees.
- The EC also requests that a commitment be made to allow as intra-corporate transferees without requiring an economic needs test « persons with a university degree or equivalent technical qualification who are transferring for career development purposes or to obtain training in business techniques or methods ». The maximum prior employment requirement should be one year.

Business Visitors

- One year minimum prior employment requirement for business visitors entering to negotiate and conclude contracts. **EC request:** Eliminate this requirement.
- No specific commitment has been made for Business Visitors who are not entering to themselves supply a service, but rather to establish a commercial presence. **EC request:** Make a specific commitment to this effect. The maximum length of stay should be at least 90 days in any 12 month period.

Other

The EC considers that Malaysia's horizontal Mode 4 commitments cover the provision of services under contract where the service supplier has no commercial presence in Malaysia and where that service is provided by "specialists or experts" and/or "professionals". **EC Request:**

- Please confirm this understanding
- In the case of "specialists or experts", eliminate the requirement to employ and/or train Malaysian nationals

Additional commitments

- Difficulties are experienced as a result of the length of time taken to process work permits. The EC wishes to discuss the possibility of taking additional commitments to address this issue.

Note: Mode 4 is covered horizontally in this part for all service sectors. The sectoral requests in the following pages only refer to mode 4 when specifically related to one particular service sector.

PROFESSIONAL SERVICES

EC REQUEST TO MALAYSIA

Malaysia has committed this sector only partially. The EC requests that this sector is committed as follows:

A. LEGAL SERVICES (CPC 861)

- This sub-sector is not committed for practice of third country law. **EC Request:** Extend sectoral coverage of commitments to consultancy on law of jurisdiction where the service supplier or its personnel are qualified lawyers
- Mode 3: MA - Territorial restrictions (Labuan territory) for service suppliers and for recipients of services. **EC Request:** Remove in order to permit foreign lawyers to practise anywhere in Malaysia, to employ and enter into partnership with Malaysian lawyers and to enter into the employment of a Malaysian lawyer or law firm

B. ACCOUNTING, AUDITING AND BOOKKEEPING SERVICES (CPC 862)

- Mode 3: MA – Obligation to enter into a limited partnership (30%) with Malaysian accountants or accounting firms. **EC Request:** Remove
- Mode 4: MA – Residency requirement for registration. **EC Request:** Remove

D. ARCHITECTURAL SERVICES (CPC 8671)

- Modes 1 and 2: NT – Requirement of authentication by a registered architect in Malaysia. **EC Request:** Remove
- Mode 3: MA – Supply of services restricted to natural persons. **EC Request:** Remove
- Mode 3: MA – While the schedule does not list limitations on the form of commercial presence, the EC understands that local rules de facto restrict the possibility of obtaining an authorisation, thereby leaving foreign companies no choice but to liaise with a local partner. **EC Request:** Explain the content of local rules.
- Mode 4: MA – Limitation to projects wholly financed by foreign governments or implemented under bilateral agreements. **EC Request:** Remove

E. ENGINEERING SERVICES (CPC 8672)

- Modes 1 and 2: NT – Requirement of authentication by a registered professional engineer in Malaysia. **EC Request:** Remove
- Mode 3: MA – Supply of services restricted to natural persons. **EC Request:** Remove
- Mode 3: MA – While the schedule does not list limitations on the form of commercial presence, the EC understands that local rules de facto restrict the possibility of obtaining an authorisation, thereby leaving foreign companies no choice but to liaise with a local partner. **EC Request:** Explain the content of local rules.

- Mode 4: MA – Condition of temporary registration. **EC Request:** Precise the scope of his registration and confirm that, as for integrated engineering services, the duration of stay can exceed one year if that is necessary to complete a contract.

F. INTEGRATED ENGINEERING SERVICES (CPC 8673)

- Modes 1 and 2: NT – Requirement of authentication by the relevant registered professionals in Malaysia. **EC Request:** Remove
- Mode 3: MA – Access restricted to representative office, regional office or limited joint-venture (30% foreign shareholding) with Malaysian individuals or corporations. **EC Request:** Remove

The EC also invites Malaysia to consider improving current commitments in the sub-sectors of taxation services and urban planning and landscape architectural services.

BUSINESS SERVICES (OTHER THAN PROFESSIONAL)

EC REQUEST TO MALAYSIA

B. COMPUTER AND RELATED SERVICES

This sub-sector has only been partially committed. **EC request** Extend coverage and schedule commitments at the two-digit level as follows:

Computer and Related Services (CPC 84):

- Modes 1, 2 and 3: Take full commitments, i.e. schedule “none” under MA and NT;
- Mode 4: Commit as referred to in the horizontal section.

F. OTHER BUSINESS SERVICES:

NB: Requests (if any) on (h) - services incidental to mining, and (j) - services incidental to energy distribution, are covered in those sections of the request dealing with Energy Services and Construction Services.

Malaysia has not committed the following sub-Sectors. The EC requests that they be committed as follows:

- d) Services related to management consulting (CPC 866)**
- m) Related scientific and technical consulting services (CPC 8675)**
- n) Maintenance and Repair of Equipment (not including transport equipment) (CPC 633 + 8861-8866)**

For each of the above sub-sectors:

- Modes 1,2 and 3: Take full commitments, i.e. schedule “none” under MA and NT.
- Mode 4: Commit as referred to in the section “Horizontal commitments”

l) Security Services (CPC 87302 – 87309)

Malaysia has not committed this sub-Sector. The EC requests that it be committed as follows:

- Mode 3: MA - Commit with no form of establishment or equity limitation. Full NT commitment - i.e. schedule "none".
- Mode 4: Commit as referred to in the section "Horizontal commitments".

o) Building cleaning services (CPC 874)

Malaysia has not committed this sub-sector. **EC Request:**

- Mode 3: Take full commitments, i.e. schedule “none” under MA and NT
- Mode 4: Commit as referred to on the section “Horizontal commitments”

a) Advertising (CPC 871)

This sub-sector has only been partially committed. **EC request:** Extend sectoral coverage to all of CPC 871.

- Mode 1: MA – Effectively unbound. NT – Remain unbound. **EC request:** Take full commitments, i.e. schedule « none » under MA and NT.
- Mode 3: MA – Form of establishment and foreign equity limitations. **EC request:** Eliminate.
- Mode 3: MA – for advertisement through electronic media there is a local content requirement. **EC request:** Eliminate.
- Mode 4: MA – Only part of the horizontal commitments applied. **EC request:** Commit all of the horizontal commitments.

b) Market research (CPC 86401)

- Mode 3: MA – Form of establishment limitation and minimum Bumiputera shareholding requirement. **EC request:** Eliminate.
- Mode 4: MA – Only part of the horizontal commitments applied. **EC request:** Commit all of the horizontal commitments.

c. Management consulting services (CPC 865)

This sub-sector has only been partially committed. **EC request:** Extend sectoral coverage to all of CPC 865.

- Mode 3: MA – Form of establishment limitation and minimum Bumiputera shareholding requirement. **EC request:** Eliminate.
- Mode 4: MA – Only part of the horizontal commitments applied. **EC request:** Commit all of the horizontal commitments.

e) Technical testing and analysis services (CPC 8676)

This sub-sector has not been committed for « technical inspection services » (CPC 86764). **EC request:** Extend sectoral coverage to all of CPC 8676.

- Mode 3: MA – Form of establishment limitation and minimum Bumiputera shareholding requirement. **EC request:** Eliminate.
- Mode 4: MA – Only part of the horizontal commitments applied. **EC request:** Commit all of the horizontal commitments.

Grounds maintenance (part of CPC 88110) and

Washing and Cleaning Services (CPC 97011-97014)

Malaysia has not committed these two sub-sectors. **EC Request:**

- Mode 3: Take full commitments, i.e. schedule “none” under MA and NT
- Mode 4: Commit as referred to in the section “Horizontal commitments”

The EC also invites Malaysia to consider taking commitments in Research and Development Services (CPC 85), Real Estate Services (CPC 82), Placement and supply services of personnel (CPC 872), packaging services (CPC 876), printing and publishing services (CPC 88442), as well as improving existing commitments on Rental and Leasing Services without Operators (CPC 831), convention services (part of CPC 87909) and translation services (CPC 87905).

MFN EXEMPTIONS:

Advertising services: MFN exemption grants ASEAN countries more than the general 20% ownership limit. **EC request:** eliminate.

POSTAL AND COURIER SERVICES

EC REQUEST TO MALAYSIA

Malaysia has not undertaken commitments in postal and courier services. This request is based in the EC proposal for the classification of postal and courier services. While discussions on classification in this sector are still ongoing, the EC would like to invite Malaysia to present its offer in accordance with this proposal, without prejudice to the outcome of the discussion on the classification of postal and courier services:

SERVICES RELATING TO THE HANDLING¹ OF POSTAL ITEMS², WHETHER FOR DOMESTIC OR FOREIGN DESTINATIONS:

A. Handling of addressed written communications on any kind of physical medium³, including:

- Hybrid mail services
- Direct mail

B. Handling of addressed parcels and packages⁴

C. Handling of addressed press products⁵

D. Handling of items referred to in A. to C. above as registered or insured mail.

E. Express delivery services⁶ for items referred to in A. to C. above.

F. Handling of non-addressed items.

G. Document exchange.

H. Other services not elsewhere specified.

¹ The term "handling" should be taken to include clearance, sorting, transport and delivery.

² "Postal item" refers to items handled by any type of commercial operator, whether public or private.

³ E.g. letter, postcards.

⁴ Books, catalogues are included hereunder.

⁵ Journals, newspapers, periodicals.

⁶ Express delivery services may include, in addition to greater speed and reliability, value added elements such as collection from point of origin, personal delivery to addressee, tracing and tracking, possibility of changing the destination and addressee in transit, confirmation of receipt.

For sub-sectors B., C., E., F. and G.:

- Modes 1, 2 and 3: Undertake full commitments for market access and national treatment.
- Mode 4: Commit as referred to in the section « Horizontal commitments ».

For sub-sectors A. and D.:

- Modes 1, 2 and 3: Undertake commitments for market access and national treatment.
- Mode 4: Commit as referred to in the section « Horizontal commitments ».

TELECOMMUNICATION SERVICES

EC REQUEST TO MALAYSIA

Malaysia has only partially committed this Sector. The EC requests that this Sector is committed as follows:

ALL MODES

- Basic services can only be provided on a facilities-basis. Under the schedule of Malaysia, basic services cover 1.Voice Service (wired or wireless); 2. Packet-switched data transmission services, including frame-relay services; 3. Circuit-switched data transmission services; 4. Facsimile Service; 5. Private leased circuit service; 6. Domestic/International satellite services and satellite links/capacities (inclusive of mobile satellite); 7.Satellite earth stations; 8. International switching and other international gateway facilities; 9. Mobile services - analogue/digital cellular; 10. Paging services; 11. Trunked radio services; 12. Video transport services. **EC Request:** for all those services remove this requirement to own facilities.
- Value-added services must be provided from channels or lines obtained only from licensed network operators. **EC Request:** remove this provision.

MODE 3 – COMMERCIAL PRESENCE

- For basic services, operation can only be done through acquisition of shares of existing licensed public telecommunications operators. . **EC Request:** remove this restriction.
- For basic services, Foreign shareholding is allowed up to 30 per cent. **EC Request:** remove this ceiling.
- For value added services (mobile and fixed data) and Telex and telegraph services companies, there is an obligation to have a joint-venture corporation with Malaysian individuals or Malaysian-controlled corporations or to acquire shares of an existing licensed VAS operator/corporation. **EC Request:** remove this obligation.
- For value added services (mobile and fixed data services) and Telex and telegraph services companies, there is a 30% cap on foreign equity. **EC Request:** remove this ceiling.
- For value added services companies, resale is prohibited. **EC Request:** remove this restriction.

Additional commitments

Malaysia has not adopted the reference paper of the Basic Telecommunications negotiations and only made a few additional commitments addressing the issues raised by this paper. **EC Request:** Commit fully to the reference paper of the Basic Telecommunications negotiations.

CONSTRUCTION AND RELATED ENGINEERING SERVICES

EC REQUEST TO MALAYSIA

GENERAL

Malaysia has committed this Sector only partially. The EC requests that this Sector be committed as follows:

ALL SUB-SECTORS (CPC 511 to CPC 518)

- Mode 3: MA – Only through a representative office, regional office or locally incorporated joint-venture corporation with Malaysian individuals or Malaysian-controlled corporations or both. **EC Request:** Remove these restrictions.
- Mode 3: MA – Limitation to 30% of aggregate foreign shareholding in the joint-venture corporation. **EC Request:** Remove this limitation.

E. OTHER (CPC 511+515+518)

This sub-sector is not committed for CPC 518 (renting services related to equipment for construction or demolition of buildings or civil engineering works, with operator).

EC Request for this CPC:

- Mode 3: Take full commitments, i.e. schedule “none” under MA and NT.
- Mode 4: Commit as referred in the section “Horizontal commitments”.

Note: "MA" refers to commitments scheduled under the "Market Access" column. "NT" under the "National treatment" column.

DISTRIBUTION SERVICES

EC REQUEST TO MALAYSIA

Malaysia has not committed this Sector. The EC requests that this Sector is committed as follows:

A. Commission agents' services (CPC 621, 6111+6113+6121)

B. Wholesale trade services (CPC 622, 6111+6113+6121)

C. Retailing services (CPC 631+632, 6111+6113+6121+613)

D. Franchising (CPC 8929)

For each of the above sub-sectors:

- Modes 1, 2, 3: Take full commitments, i.e. schedule "none".
- Mode 4: Commit as referred in the section "Horizontal commitments".

Note: The EC is prepared to discuss exceptions for a very limited number of extremely sensitive goods, such as arms, ammunitions and explosives.

Note: In accordance with the W120 classification, the EC Request on "Repair services of personal and household goods" (CPC 633) is included under "I. Business services / F. Other business / n. Maintenance and repair".

ENVIRONMENTAL SERVICES

EC REQUEST TO MALAYSIA

Malaysia has not undertaken commitments in environmental services. This request is based on the EC proposal for the classification of environmental services. While discussion in this sector are still ongoing, the EC would like to invite Malaysia to present its offer in accordance with this proposal, without prejudice to the outcome of the discussion on the classification of environmental services:

A. WATER FOR HUMAN USE & WASTEWATER MANAGEMENT

Water collection, purification and distribution services through mains, except steam and hot water

This sub-sector only concerns the distribution of water ‘through mains’ (i.e. urban sewage systems). This excludes any cross-border transportation either by pipeline or by any other means of transport, nor does it imply access to water resources.

- Mode 3: take commitments under MA and NT
- Mode 4: Commit as referred to in the section “Horizontal commitments”

Waste water services (CPC 9401)

- Mode 3: Take full commitments, i.e. schedule “none” under MA and NT
- Mode 4: Commit as referred to in the section “Horizontal commitments”

B. SOLID/HAZARDOUS WASTE MANAGEMENT

Refuse disposal services (CPC 94020)

Sanitation and similar services (CPC 94030)

C. PROTECTION OF AMBIENT AIR AND CLIMATE

Services to reduce exhaust gases and other emissions and improve air quality (CPC 94040)

D. REMEDIATION AND CLEANUP OF SOIL & WATER

Treatment, remediation of contaminated/polluted soil and water (part of CPC 94060)

E. NOISE & VIBRATION ABATEMENT

Noise abatement services (CPC 94050)

F. PROTECTION OF BIODIVERSITY AND LANDSCAPE

Nature and landscape protection services (part of CPC 94060)

G. OTHER ENVIRONMENTAL & ANCILLIARY SERVICES

Other environmental protection services not classified elsewhere (CPC 94090)

For each of the above sub-sectors:

- Modes 1 (where technically feasible), 2 and 3: Undertake full commitments for market access and national treatment.
- Mode 4: Refer to horizontal commitments.

FINANCIAL SERVICES

EC REQUEST TO MALAYSIA

Malaysia has committed this sector only partially. The EC requests that it be committed as follows:

GENERAL

- **EC Request:** Undertake commitments in accordance with the Understanding on Commitments in Financial Services.
- Mode 3: NT – Unbound for measures affecting financial services accorded to Bumiputera. **EC Request:** Specify these limitations.
- Mode 4: MA and NT - Restrictions on the number of foreign managers and specialists. **EC Request:** Remove those limitations.

INSURANCE

- Mode 3: MA – Limits on foreign shareholding. **EC Request:** Eliminate all these caps.
- Mode 3: MA – Limitation of 5% share of an insurance company in another insurance company or in an insurance broking company. **EC Request:** Remove this limit.
- Mode 3: MA – In direct insurance, unbound for new licences. **EC Request:** Eliminate this restriction.
- Mode 3: MA - Economic needs test. **EC Request:** Eliminate the test.
- Mode 1: MA – In non-life insurance, soliciting and advertising in Malaysia are not allowed. **EC Request:** Remove this limitation.
- Modes 1 and 2: MA – Cross-border MAT insurance is only partly committed and is possible only if it is not available from companies in Malaysia. **EC Request:** Commit MAT insurance in accordance with the Understanding.
- Mode 3: NT – In life and non-life insurance, internal branching is committed only for companies with foreign shareholding less than 50%. **EC Request:** Commit fully internal branching.
- Mode 3: NT – In life and non-life insurance, unbound for special assistance to Malaysian-owned companies to promote their development. **EC Request:** Remove this discrimination.
- Modes 1,2 and 3: MA – Outward life and non-life reinsurance is permitted only if local capacity is not available. **EC Request:** Remove this limitation.
- Modes 1 and 2: NT – In non-life reinsurance, mandatory cessions are imposed. **EC Request:** Eliminate this requirement.
- Modes 1 and 2: NT – In life and on-life reinsurance, unbound for fiscal incentives to promote reinsurance in Malaysia. **EC Request:** Remove this limitation.
- Mode 3: NT – In non-life reinsurance, unbound for measures granting special position to Malaysian National Reinsurance Berhad. **EC Request:** Remove this discrimination.

- Mode 3: MA – Limits on the number of life and non-life reinsurance licences. **EC Request:** Eliminate these limits.
- Modes 1 and 2: MA and NT - Insurance intermediation is only partly committed. **EC Request:** Commit fully intermediation of reinsurance and of MAT insurance in accordance with the Understanding.
- Mode 3: MA – Unbound for onshore insurance intermediation. **EC Request:** Remove this limitation.
- Mode 1: MA – Actuarial services can only be provided to offshore companies. **EC Request:** Remove this limitation.
- Modes 1 and 2: NT – Deposit requirement if the reinsurer is not established locally. **EC Request:** Clarify why this limitation has not been scheduled.
- Mode 3: NT - Restrictions on management/service agreements - e.g. preventing reimbursement of genuine expenses incurred by overseas parent companies. **EC Request:** Eliminate those restrictions.
- Mode 3: NT – Existence of a discriminatory double taxation of premiums on insured imports and exports of domestic companies. **EC Request:** No tax limitation has been scheduled, but EU industry raises this issue. Please explain.

BANKING AND OTHER FINANCIAL SERVICES

- Pensions fund management, part of services related to the issuance of securities, settlement and clearing services for financial assets, and provision and transfer of financial information are not covered. **EC Request:** Take full commitments in modes 1,2 and 3 for provision and transfer of financial information, in modes 2 and 3 in the other subsectors, and commit as referred to in the section “Horizontal commitments” in mode 4.
- Mode 3: MA – New entry in all sectors is limited, with few exceptions (such as charge card firms and offshore banks), to acquiring shares of existing local companies or establishing joint ventures. No new branches are permitted. **EC Request:** Remove these restrictions.
- Mode 3: MA – Limits on foreign shareholding in various categories of financial institutions (commercial banks, merchant banks, leasing companies, securities firms,...). **EC Request:** Eliminate all these caps.
- Mode 3: MA - Economic needs test in various sub-sectors, including banking and securities broking. **EC Request:** Eliminate the test.
- Mode 3: MA – A commercial bank is not allowed to acquire any share in another commercial bank. **EC Request:** Eliminate this restriction.
- Mode 3: MA – A merchant bank is not allowed to acquire any share in a commercial bank or another merchant bank. **EC Request:** Remove this restriction.
- Mode 3: MA – Foreign- owned commercial banks are permitted to accept foreign currency deposits from residents subject to conditions. **EC Request:** Specify these conditions.
- Mode 3: NT – Unbound for branching of various financial institutions and for networking with ATMs. **EC Request:** Eliminate these restrictions.
- Mode 3: NT – Branching is permitted for merchant banks with foreign shareholding less than 30%. **EC Request:** Commit branching irrespective of level of foreign shareholding.

- Mode 3: NT –Discriminatory limit on credit facilities extended by foreign-controlled banking institutions. **EC Request:** Eliminate the discrimination.
- Mode 3: MA – Only Malaysian-controlled banks are permitted to issue, sell or purchase ringgit travellers cheques. **EC Request:** Eliminate this restriction.
- Mode 3: MA and NT - Limitation on foreign banks to operate from only one office (with some grandfathered exceptions) and prohibition to open sub-branches. **EC Request:** Remove those limitations.
- Mode 3: MA and NT - Prevention applied to foreign banks from having access to local currency capital market. **EC Request:** Remove this restriction.
- Modes 1 and 2: MA – Advisory and other auxiliary financial services is only partly committed. **EC Request:** Take full commitments, i.e. schedule “none”.
- Mode 3: NT - Foreign banks’ branches are not allowed to use parent’s capital to meet prudential requirements, even if their home country’s regulation and supervision has implemented Basle or equivalent standards. **EC Request:** Allow branches to use parent’s capital to meet prudential requirements.
- Mode 3: Regulation on branch capital: the guarantee granted by the branch’s head office or by another foreign bank for additional lending volume is not taken into account. **EC Request:** Take into account the guarantee extended by the branch’s head office or by another foreign bank for additional lending volume.
- Mode 4: MA and NT - Restriction in the composition of the boards of foreign banks, as imposed by the Central Bank. **EC Request:** Eliminate this restriction.
- Mode 3: MA and NT - Limitation applied to foreign brokers to operate out of representative offices (no trading permitted) or through 30% shares in local brokers. **EC Request:** Remove this limitation.
- Mode 3: MA and NT - Unfair funding advantage provided on capital markets to deposit takers (mainly local) over finance companies with foreign partners. **EC Request:** Remove this discrimination.
- Mode 3: Requirement applied to all banks to provide quota for low-cost housing. **EC Request:** Clarify why this limitation has not been scheduled.
- Mode 3: Prohibition applied to foreign banks from participating in business of government owned banks. **EC Request:** Remove this prohibition.
- Mode 3: MA and NT - Discrimination against foreign companies owning over 30% but less than 100% of a finance company because debt-equity ratio of foreign company cannot exceed 2:1. **EC Request:** Eliminate this discrimination.

TOURISM AND TRAVEL RELATED SERVICES

EC REQUEST TO MALAYSIA

Malaysia has committed this sector only partially. The EC requests that it be committed as follows:

A. HOTELS AND RESTAURANTS (INCL. CATERING)(CPC 641-643)

Mode 3: Market access: Remove requirement to establish as locally incorporated joint-venture with Malaysian individuals or Malaysian controlled corporations. Remove limitation of 30% for foreign shareholding.

Mode 4: Commit as referred to in the section “Horizontal commitments”

CPC 87909 (Other business services n.e.c.): Could Malaysia clarify which services in relation to hotels and restaurants, and tourist resorts are covered? The EC suggests to move this entry to 'Other' tourism and travel related services and specify activities. Is this commitments to be read to only cover mode 3?

B. TRAVEL AGENCIES AND TOUR OPERATORS SERVICES (CPC 7471)

Mode 1, MA and NT: The EC is of the view that the provision of travel agency and tour operator services can be provided under this mode of supply. The EC request Malaysia to take full commitments for mode 1.

Mode 3: Market access: Remove requirement to establish as locally incorporated joint-venture with Malaysian individuals or Malaysian controlled corporations. Remove limitation of 30% for foreign shareholding.

Remove requirement for additional office to obtain a separate licence.

Mode 4: Commit as referred to in the section “Horizontal commitments”

C. TOURIST GUIDES SERVICES (CPC 7472)

Extend sectoral coverage to include tourist guide services, and undertake full commitments for mode 2 and 3.

Mode 4: Commit as referred to in the section “Horizontal commitments”

NEWS AGENCY SERVICES

EC REQUEST TO MALAYSIA

Malaysia has not committed this sector (CPC 962). The EC requests that this Sector be committed as follows:

EC Request (CPC 962):

- Modes 1-3: Take full commitments, i.e. schedule “none” under MA and NT.
- Mode 4: Commit as referred to in the section “Horizontal commitments”.

TRANSPORT SERVICES

EC REQUEST TO MALAYSIA

A. MARITIME TRANSPORT

Malaysia has specific commitments on maritime transport. Restrictions relate in particular to establishment (Mode 3, nationality restrictions, ownership limitations of 30 %) and to auxiliary services such as cargo-handling, customs clearance and container stations which are not committed.

EC request: Take commitments in accordance with the attached model schedule (Annex 1). In particular for the following areas:

- 1) International transport (freight and passengers) CPC 7211 and 7212
- 2) Additional commitments for access to and use of ports facilities
- 3) Maritime auxiliary services (maritime cargo handling, storage and warehouse services, customs clearance services, container station and depot services, maritime agency services)
- 4) Multimodal activities: for inland forwarding of cargoes - commit the ability to rent or lease - or to have access to and use of multimodal facilities (as specified in the note to the schedule).
- 5) Definitions – commit definitions as specified in the model schedule.

The EC also request the following additional maritime commitments from Malaysia:

- 6) Equipment. To facilitate planning of their businesses operators should be allowed to reposition their own equipment, such as empty containers, between ports of Malaysia, when it is not carried against payment. This is requested to be committed in a new footnote:

“9. Movement of own equipment. International maritime transport suppliers can move/reposition their own equipment (i.e. empty containers, flatbeds etc.) on their own vessels between ports of Malaysia.”

- 7) International cargo. With the development of containerisation and high frequency networking services and with the ever-larger vessels having to limit direct port calls for physical or economic reasons, the feeding of cargoes between main ports and way ports is becoming more important as an integral part of efficient international maritime transport. An international maritime transport supplier should be allowed to operate feeder services for its international cargo between ports of Malaysia. This is requested to be committed in a new footnote:

“10. International maritime transport suppliers can operate vessels of any flag for the purposes of pre- and onward carriage of the international cargo between ports of Malaysia.”

In this context Malaysia may wish to take the one or more of the following principles into concern:

- Size of the port. Only valid for international cargo relayed between national ports handling more than [25.000 TEU] on an annual basis.
- Binding existing ad hoc practices. To the extent exceptions are already granted for use of foreign flagged vessels such practices could be bound to explicitly cover pre- and onward carriage of international cargo.
- Geographical limitations: Transport of international cargo between ports within the same state/territory [or other relevant regional entity] remains excluded.

A final request related to maritime transport is:

8) Rental and leasing of vessels with crew (CPC 7213, 7223).

EC request:

- Modes 1, 2 and 3: Take full commitments, i.e. schedule “none”, under MA and NT
- Mode 4: Commit as in horizontal commitments.

C. AIR TRANSPORT

Malaysia has no specific commitments for air transport.

1) Maintenance and repair of aircraft and parts thereof.

EC request:

- Modes 2 and 3: Take full commitments, i.e. schedule “none”, under MA and NT
- Mode 4: Commit as referred in the section “Horizontal commitments”

2) Selling and marketing.

EC request:

- Modes 1, 2 and 3: Take full commitments, i.e. schedule “none”, under MA and NT
- Mode 4: Commit as referred in the section “Horizontal commitments”

3) Computer Reservation Systems.

EC request:

- Modes 1, 2 and 3: Take full commitments, i.e. schedule “none”, under MA and NT
- Mode 4: Commit as referred in the section “Horizontal commitments”

4) Groundhandling services, as specified in the attached definitions (Annex 2).

EC request:

- Modes 2 and 3: Take full commitments, i.e. schedule “none”, under MA and NT
- Mode 4: Commit as referred in the section “Horizontal commitments”

5) Airport management services, as specified in the attached definitions (Annex 2).

EC request:

- Mode 3: Take full commitments, i.e. schedule “none”, under MA and NT
- Mode 4: Commit as referred in the section “Horizontal commitments”

F. ROAD TRANSPORT

b) Freight Transportation (CPC 7123).

EC request:

- Mode 3: Take full commitments, i.e. schedule “none”, under MA and NT
- Mode 4: Commit as referred in the section “Horizontal commitments”

d) Maintenance and Repair of Road Transport Equipment (CPC 6112)

EC request:

- Modes 1, 2 and 3: Take full commitments, i.e. schedule “none”, under MA and NT
- Mode 4: Commit as referred in the section “Horizontal commitments”

H. SERVICES AUXILIARY TO ALL MODES OF TRANSPORT

b) Storage and Warehouse Services (CPC 742)

EC request:

- Modes 2 and 3: Take full commitments, i.e. schedule “none”, under MA and NT
- Mode 4: Commit as referred in the section “Horizontal commitments”

c) Freight Transport Agency/Freight Forwarding Services (CPC 748) and Pre-shipment Inspection (part of CPC 749).

Malaysia has commitments which are restricted to the context of maritime transport and with a restrictions related establishment (foreign ownership limited to 30%).

EC request:

- Modes 1, 2 and 3: Take full commitments, i.e. schedule “none”, under MA and NT
- Mode 4: Commit as referred in the section “Horizontal commitments”

ANNEX 1: SCHEDULE ON MARITIME TRANSPORT SERVICES

SECTOR OR SUB-SECTOR	LIMITATIONS ON MARKET ACCESS	Limitations on National Treatment	ADDITIONAL COMMITMENTS
<p>TRANSPORT SERVICES MARITIME TRANSPORT SERVICES International Transport (freight and passenger) CPC 7211 and 7212 <u>less</u> cabotage transport (as defined below – 1)</p>	<p>1) (a) <u>Liner Shipping</u>: none (b) <u>Bulk, tramp, and other international shipping, including passenger transportation</u>: none</p> <p>2) None</p> <p>3) (a) Establishment of registered company for the purpose of operating a fleet under the national flag of the State of establishment: unbound (b) Other forms of commercial presence for the supply of international maritime transport services (as defined below – 2): none</p> <p>4) (a) Ships crews: unbound (b) Key personnel employed in relation to a commercial presence as defined under mode 3b) above: Unbound except as in horizontal section</p>	<p>1) (a) None (b) None</p> <p>2) None</p> <p>3) (a) Unbound (b) None</p> <p>4) (a) Unbound (b) Unbound except as in horizontal section</p>	<p>The following services at the port are made available to international maritime transport suppliers on reasonable and no discriminatory terms and conditions</p> <ol style="list-style-type: none"> 1. Pilotage 2. Towing and tug assistance 3. Provisioning, fuelling and watering 4. Garbage collecting and ballast waste disposal 5. Port Captain's services 6. Navigation aids 7. Shore-based operational services essential to ship operations, including communications, water and electrical supplies 8. Emergency repair facilities 9. Anchorage, berth and berthing services

Sector or Sub-Sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
<p>MARITIME AUXILIARY SERVICES Maritime Cargo Handling Services (as defined below – 4)</p> <p>Storage and warehousing Services CPC 742</p> <p>Customs Clearance Services (as defined below – 5)</p> <p>Container Station and Depot Services (as defined below – 6)</p> <p>Maritime Agency Services (as defined below – 7)</p> <p>(Maritime) Freight Forwarding Services (as defined below – 8)</p>	<p>1) Unbound* except for – no limitation on transshipment (board to board or via the quay) and/or on the use of on-board cargo handling equipment</p> <p>2) None</p> <p>3) None**</p> <p>4) Unbound except as in horizontal section</p> <p>1) Unbound*</p> <p>2) None</p> <p>3) None**</p> <p>4) Unbound except as in horizontal section</p> <p>1) Unbound*</p> <p>2) None</p> <p>3) None**</p> <p>4) Unbound except as in horizontal section</p> <p>1) Unbound*</p> <p>2) None</p> <p>3) None**</p> <p>4) Unbound except as in horizontal section</p> <p>1) None</p> <p>2) None</p> <p>3) None</p> <p>4) Unbound except as in horizontal section</p> <p>1) None</p> <p>2) None</p> <p>3) None</p> <p>4) Unbound except as in horizontal section</p>	<p>1) Unbound* except for no limitation on transshipment (board to board or via the quay) and/or on the use of on-board cargo handling equipment</p> <p>2) None</p> <p>3) None</p> <p>4) Unbound except as in the horizontal section</p> <p>1) Unbound*</p> <p>2) None</p> <p>3) None</p> <p>4) Unbound except as in the horizontal section</p> <p>1) Unbound*</p> <p>2) None</p> <p>3) None</p> <p>4) Unbound except as in the horizontal section</p> <p>1) Unbound*</p> <p>2) None</p> <p>3) None</p> <p>4) Unbound except as in the horizontal section</p> <p>1) None</p> <p>2) None</p> <p>3) None</p> <p>4) Unbound except as in the horizontal section</p> <p>1) None</p> <p>2) None</p> <p>3) None</p> <p>4) Unbound except as in the horizontal section</p>	

* A commitment on this mode of delivery is not feasible.

** Public utility concession or licensing procedures may apply in case of occupation of the public domain.

NOTE TO THE SCHEDULE

Where road, rail, inland waterways (and) (related) (auxiliary) services are not otherwise fully covered in (this) (a Member's) schedule, a multimodal transport operator shall have the ability to rent or lease trucks, railway carriages or barges, and related equipment, for the purpose of inland forwarding of cargoes, or have access to, and use of, these forms of multimodal activities on reasonable and non-discriminatory terms and conditions for the purpose of carrying out multimodal transport operations. (« Reasonable and non-discriminatory terms and conditions » means, for the purpose of (multimodal transport operations), (this additional commitment), the ability of the multimodal transport operator to arrange for the conveyance of its merchandise on a timely basis, including priority over other merchandise which has entered the port at a later date).

DEFINITIONS

1. Without prejudice to the scope of activities which may be considered as « cabotage » under the relevant national legislation, this schedule does not include « maritime cabotage services », which are assumed to cover transportation of passengers or goods between a port located in ... (name of country or, for EEC, « a Member State ») and another port located in ... (name of the country or, for EEC, « the same Member State ») and traffic originating and terminating in ... the same port located in (name of country, or for the EEC, « a Member State ») provided that this traffic remains within ... (name of country or « this Member State »)'s territorial waters.

2. « Other forms of commercial presence for the supply of international maritime transport services » means the ability for international maritime transport service suppliers of other Members to undertake locally all activities which are necessary for the supply to their customers of a partially or fully integrated transport service, within which the maritime transport constitutes a substantial element. (This commitment shall however not be construed as limiting in any manner the commitments undertaken under the cross-border mode of delivery).

These activities include, but are not limited to:

- (a) marketing and sales of maritime transport and related services through direct contact with customers, from quotation to invoicing, these services being those operated or offered by the service supplier itself or by service suppliers with which the service seller has established standing business arrangements;
- (b) the acquisition, on their own account or on behalf of their customers (and the resale to their customers) of any transport and related services, including inward transport services by any mode, particularly inland waterways, road and rail, necessary for the supply of the integrated services;
- (c) the preparation of documentation concerning transport documents, customs documents, or other documents related to the origin and character of the goods transported;
- (d) the provision of business information by any means, including computerised information systems and electronic data interchange (subject to the provisions of the annex on telecommunications);
- (e) the setting up of any business arrangements (including participation in the stock of a company) and the appointment of personnel recruited locally (or, in the case of foreign personnel, subject to the horizontal commitment on movement of personnel) with any locally established shipping agency;
- (f) acting on behalf of the companies, organising the call of the ship or taking over cargoes when required.

3. « Multimodal transport operators » means the person on whose behalf the bill of lading /multimodal transport document, or any other document evidencing a contract of multimodal carriage of goods, is issued and who is responsible for the carriage of goods pursuant to the contract of carriage.

4. « Maritime cargo handling services » means activities exercised by stevedore companies, including terminal operators, but not including the direct activities of dockers, when this workforce is organised independently of the stevedoring or terminal operator companies. The activities covered include the organisation and supervision of:

- the loading/discharging of cargo to/from a ship;
- the lashing/unlashing of cargo;
- the reception/delivery and safekeeping of cargoes before shipment or after discharge.

5. « Customs clearance services » (alternatively « customs house brokers' services ») means activities consisting in carrying out on behalf of another party customs formalities concerning import, export or through transport of cargoes, whether this service is the main activity of the service provider or a usual complement of its main activity.

6. « Container station and depot services » means activities consisting in storing containers, whether in port areas or inland, with a view to their stuffing/stripping, repairing and making them available for shipments.

7. « Maritime agency services » means activities consisting in representing, within a given geographic area, as an agent the business interests of one or more shipping lines or shipping companies, for the following purposes:

- marketing and sales of maritime transport and related services, from quotation to invoicing, and issuance of bills of lading on behalf of the companies, acquisition and resale of the necessary related services, preparation of documentation, and provision of business information;
- acting on behalf of the companies organising the call of the ship or taking over cargoes when required.

8. « Freight forwarding services » means (the activity consisting of organising and monitoring shipment operations on behalf of shippers, through the acquisition of transport and related services, preparation of documentation and provision of business information).

ANNEX 2 FACILITATING AIR TRANSPORT SERVICES

Ground-handling Services

Efficient ground-handling is essential to the proper functioning of air transport and competition between operators in this area ensures that proper use is made of air transport infrastructure. It helps reduce the operating costs of airlines and improves the quality of service for airport users.

For specialised groundhandling suppliers the following activities are requested:

Ground Administration – supervision and administration at the airport (CPC 7461);
Passenger Handling – assisting arriving, departing and transfer passengers (CPC 7461);

Baggage Handling – handling baggage in the sorting area (CPC 7461);

Freight and Mail Handling – physical handling of freight and mail, dealing with security and customs procedures (CPC 74110 (container handling services) and 74190 (other cargo handling services);

Ramp Handling – marshalling and moving the aircraft, loading and unloading of aircraft, transport of passengers, freight, supplies (CPC 7469).

Aircraft Services – cleaning the aircraft, heating and cooling, removal of snow and ice (CPC 7469);

Fuel and Oil Handling – organisation and provision of fuel and oil;

Aircraft Maintenance – covered specifically by the Annex as above;

Flight Operations and Crew Administration – preparation of the flight, inflight and post-flight assistance, crew administration;

Surface Transport – organisation and execution of transport within airport – except to and from aircraft;

Catering Services – administration, storage, preparation and delivery of bar and food supplies (CPC 6423). [Catering is listed for only for information purposes as this activity – where Malaysia has certain restrictions – is requested as part of tourism services]

Airport management services

Airport management services constitute the core activities of airport services providers and cover: Airport operation services (excl. cargo handling), including passenger air terminal services and ground services on air fields, including runway operating services, on a fee or contract CPC 74610. Activities are also related to “other management consulting services” (CPC 86509) and activities separately specified under “other management services not elsewhere classified”(CPC 86609). A commitment will allow services suppliers to take an equity stake in - and engage in the overall operation and management of - airports when these are open for investments from private operators. Thereby it will bind existing common practices in the sector.

ENERGY SERVICES

EC REQUEST TO MALAYSIA

This request includes services that are listed under the negotiating proposal of the EU (S/CSS/W/60). The work on the classification of these services is still underway. For this reason, some activities therefore lacks reference to CPC.

The EC wishes to underline the significant contribution of an appropriate use of energy for the promotion of sustainable development.

The EC requests that this area is committed as follows:

A. SERVICES RELATED TO EXPLORATION AND PRODUCTION

CPC 883: Services incidental to mining

This sub-sector is not committed. **EC Request:**

- Mode 3: Take full commitments, i.e. schedule "none".
- Mode 4: Commit as referred in the section "Horizontal commitments".

CPC 8675: Related scientific and technical consulting services

This sub-sector is not committed. **EC Request:**

- Mode 3: Take full commitments, i.e. schedule "none".
- Mode 4: Commit as referred in the section "Horizontal commitments".

CPC 511 and CPC 513: Construction and related engineering services

EC Request:

- Mode 3: Eliminate restrictions in capital participation.

B. SERVICES RELATED TO THE CONSTRUCTION OF ENERGY FACILITIES

B.1 Construction of energy facilities

CPC 513: Construction work for civil engineering

CPC 51340: For long distance pipelines, communication and power lines (cables)

CPC 51350: For local pipelines and cables; ancillary works

CPC 51360: For constructions for mining and manufacturing

EC Request:

- Mode 3: Eliminate restrictions in capital participation.

B.2 Installation and assembly work

CPC 516: Installation and assembly work

EC Request:

- Mode 3: Eliminate restrictions in capital participation.

C. SERVICES RELATED TO NETWORKS

C.1 Operation of transportation/transmission and distribution facilities

Services incidental to energy distribution (including operation of transmission/distribution of electricity)

This sub-sector is not committed. **EC Request:**

- Modes 3: Take commitments for operation of networks not part of the integrated system.
- Mode 4: Commit as referred in the section "Horizontal commitments".

CPC 71310: Transportation of petroleum and natural gas

This sub-sector is not committed. **EC Request:**

- Modes 3: Take commitments for operation of networks not part of the integrated system.
- Mode 4: Commit as referred in the section "Horizontal commitments".

D. STORAGE SERVICES

CPC 74220: Bulk storage services of liquids or gases

This sub-sector is not committed. **EC Request:**

- Mode 3: Take full commitments, i.e. schedule "none".
- Mode 4: Commit as referred in the section "Horizontal commitments".

E. SERVICES FOR THE SUPPLY OF ENERGY

E.1 Wholesale of energy products

CPC 62271: Wholesale trade services of solid, liquid and gaseous fuels and related products

This sub-sector is not committed. **EC Request:**

- Mode 3: Take full commitments for solid and liquid fuels and related products.
- Mode 4: Commit as referred in the section "Horizontal commitments".

Wholesale trade services of electricity

EC Request:

- Modes 3: Take commitments.
- Mode 4: Commit as referred in the section "Horizontal commitments".

E.2 Retail sale of energy products**CPC 63297: Retail sale of fuel oil, bottled gas, coal and wood**

This sub-sector is not committed. **EC Request:**

- Mode 3: Take full commitments, i.e. None.
- Mode 4: Commit as referred in the section "Horizontal commitments".

Retail sale trade services of electricity**EC Request:**

- Mode 3: Take commitments for the supply to industrial customers
- Mode 4: Commit as referred in the section "Horizontal commitments"

E.3 Trading of energy products**EC Request:**

- Modes 1, 2, 3: Take full commitments for non-network energy products and commitments for network-energy products.
- Mode 4: Commit as referred in the section "Horizontal commitments".

E.4 Brokering of energy products**EC Request:**

- Modes 1, 2, 3: Take full commitments for non-network energy products and commitments for network-energy products
- Mode 4: Commit as referred in the section "Horizontal commitments".

G. SERVICES RELATED TO DECOMMISSIONING**EC Request:**

- Modes 3: Take full commitments, i.e. schedule "none".
- Mode 4: Commit as referred in the section "Horizontal commitments".